



Senate  
Research  
Center

# ISSUES FACING THE 84<sup>TH</sup> TEXAS LEGISLATURE

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**JANUARY 2015**

# ISSUES FACING THE 84<sup>TH</sup> TEXAS LEGISLATURE

A report prepared by the Senate Research Center

January 2015

The following information is intended to serve as a reference guide to issues facing the 84th Legislature. It is not a comprehensive list of issues, but rather an outline of broad categories and topics of concern that have arisen during the interim. This is not intended to function as an endorsement of any issue by the Senate Research Center.

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**AGRICULTURE, RURAL AFFAIRS, AND HOMELAND  
SECURITY**

**Ammonium Nitrate Facilities**

On April 17, 2013, two explosions that killed 15 and injured more than 200 people occurred in the city of West, Texas, at the West Fertilizer Company.

An investigation by the Texas Department of Insurance (TDI) and the State Fire Marshal's Office (SFMO) concluded that the cause of the explosions was ammonium nitrate. Investigators found that a fire that started in the company's fertilizer and seed building caused the ammonium nitrate to explode. The exact cause of the fire has not yet been determined.

Many of those who were killed during the blast were first responders who entered the facility to fight the initial fire. An investigation conducted by SFMO found that the firefighters who rushed to the site of the fire had taken the correct course of action.

In 2013, SFMO identified 121 facilities that store 10,000 pounds or more of ammonium nitrate in the state. Between 28 and 34 tons of ammonium nitrate exploded during the West event. About 150 tons of ammonium nitrate was at the plant at the time of the explosion.

Many regulatory bodies oversee and should be notified of certain plants that store fertilizer, including the United States Department of Homeland Security, the United States Environmental Protection Agency, the United States Department of Transportation, the Texas Commission on Environmental Quality, the Office of the Texas State Chemist, and the Texas Department of State Health Services.

After the explosions in West, legislators and many citizens wanted to know how many facilities store ammonium nitrate in the state and how to best coordinate communication among state and federal entities that regulate the chemical.

In June 2014, Texas Attorney General Greg Abbott ruled that information regarding the location of certain hazardous chemicals in the state should be kept confidential.

Proponents of the ruling say that the locations of those chemicals should be kept confidential because of security concerns. Proponents also say that the TDI website provides general information about the storage of ammonium nitrate.

Opponents of the ruling say that withholding the locations of those chemicals could put other communities at risk of events similar to what happened in West. Opponents criticize the data available on TDI's website because they say that it is too general to be helpful to citizens.

The 84th Legislature may consider legislation relating to the regulation of ammonium nitrate facilities.

### **Border Security**

Texas shares a 1,254-mile border with Mexico. About 73 percent of the land on the Texas side of the border is private property.

The 83rd Texas Legislature appropriated \$221.6 million in general revenue funds and state highway funds for enhanced border security. The state's most recent border initiative, Operation Border Star, was first funded in 2007. The operation's aim is to gather regional intelligence from the border area and use that data to determine how to efficiently deploy law enforcement resources in the border area.

In an April 2014 hearing of the Agriculture, Rural Affairs, and Homeland Security Committee (committee), lawmakers discussed the state's efforts to secure the Texas/Mexico border to deter illegal immigration and to deter drug-related violence and crime.

During the hearing, Steven McCraw, director of the Department of Public Safety of the State of Texas (DPS), said that the national border is unsecure and that threats related to drug cartels, sexual slavery, and illegal immigration exist in the state as a result. McCraw stated that it is difficult to secure the border on, above, and along the Rio Grande. He said that integrated operations that include sheriffs, police chiefs, the United States Border Patrol, and DPS are essential.

According to DPS, an unsecure border with Mexico is the most significant public safety and homeland security concern. Cartel operatives transport drugs and people into border areas and the operatives are told to flee if they are detected by law enforcement. Cartel members use reckless driving, blocking of vehicles, and chase vehicles to thwart law enforcement. As of September 2014, there had been 957 dangerous pursuits of cartel members in border areas. As of September 2014, 817,639 pounds of marijuana, cocaine, crystal meth, and heroin had been confiscated by DPS. In the Rio Grande Valley, 135 cartel-related home invasions took place from 2012 to 2014. In 2014, 119 trafficked human stash houses and 79 drug stash houses were discovered along the Texas border. The following Mexican cartels are currently operating in Texas:

- Juarez Cartel;
- La Familia Michoacana;
- Gulf Cartel;
- Sinaloa Federation;
- Beltran Leyva Organization;
- Los Zetas; and
- Knights Templar (Templarios Caballeros).

Undocumented immigrants have long been using Texas' border with Mexico to gain entry into the country. As of September 2014, DPS reported that 251,917 undocumented persons had been apprehended while entering the country illegally. Of that number, 70 percent were people from countries other than Mexico.

Between October 2013 and August 2014, 56,443 unaccompanied children were apprehended while attempting to enter Texas through its border with Mexico. This number was a stark increase from past years and was said to be the result of violence in Central American countries, from which the children were fleeing. In response to the increase and to prevent cartels from taking advantage of the increase and entering the country at the same time, legislators and Governor Perry approved Operation Strong Safety, a multiagency surge operation in the Rio Grande Valley that cost \$38 million and deployed National Guard troops. DPS was provided with an additional \$1.3 million per week and authorized to spend as needed for surge operations. Governor Perry stated that the surge was necessary because the federal government failed to take action to secure the Texas border. Critics of the surge said that the amount being spent is too high and that deploying the National Guard was "overkill."

Recently, several officials, including Governor Perry, have said that the Islamic State of Iraq and Syria (ISIS) is planning to cross the Texas border with Mexico. Federal officials have not corroborated such claims.

Opponents of funding enhanced border security measures have expressed concern about immigration-related issues and with the unintended economic consequences that result from strict immigration protocols. Most opponents agree that high-level criminals and cartels should be stopped. Some opponents say that many of those who cross the border do so to seek better opportunities. They say that when people say that undocumented immigrants who come to the United States are "invading" the country, the language can discourage businesses from opening in border regions. Opponents also say that when local governments become involved in border security, undocumented persons are less likely to report crimes because of a fear of being deported.

Proponents of funding enhanced border security measures say that private property owners along the border are threatened by undocumented persons who illegally cross into

Texas on their land. Proponents say that a border that is not secure encourages the trafficking of drugs and humans. They say that undocumented persons take jobs that Americans need. Proponents also say that high-level criminals must be identified and stopped from crossing the border.

The 84th Legislature may consider legislation relating to funding border security initiatives.

### **Open Carry**

In an April 2014 hearing of the Agriculture, Rural Affairs, and Homeland Security committee (committee), lawmakers discussed the possibility of creating open carry legislation. Openly carrying a handgun in Texas has been prohibited since the late 1800s; the prohibition does not apply to rifles or shotguns.

In the committee hearing, legislators discussed how to create an open carry license, how to identify who is licensed to openly carry a handgun, whether open carry is necessary in the state, and how to effectively manage open carry laws in public places.

During the spring and summer of 2014, some open carry activists began walking into public places with rifles and shotguns in an effort to demonstrate the legality of the practice. The activists were of the opinion that openly carrying legal firearms in more places would make the public more comfortable with openly carrying all firearms. During the committee meeting, Senator Estes cautioned the groups against those types of demonstrations. Several businesses, such as Chipotle and Target, asked that demonstrations not take place on their premises because they may make customers uncomfortable. Some open carry organizations decried the demonstrations as detrimental to the mission to pass open carry legislation in the state.

Currently, 13 states require a permit or license to openly carry a handgun. Thirty-one states allow persons to openly carry handguns with few or no restrictions.

The following open carry bills were introduced during the 83rd Legislature, Regular and Special Sessions, 2013, but were not passed:

- H.B. 9 (Relating to authorizing certain attorneys representing the state to openly carry a handgun), by Gooden. 83rd Legislature, Third Called Session, 2013.
- H.B. 56 (Relating to the authority of a person who is licensed to carry a handgun to openly carry the handgun; providing penalties), by Lavender et al. 83rd Legislature, First Called Session, 2013.
- H.B. 34 (Relating to authorizing certain attorneys representing the state to openly carry a handgun), by Gooden. 83rd Legislature, First Called Session, 2013.

- H.B. 700 (Relating to the authority of a person who is licensed to carry a handgun to openly carry the handgun; providing penalties), by Lavender et al. 83rd Legislature, Regular Session, 2013.
- H.B. 2036 (Relating to authorizing certain attorneys representing the state to openly carry a handgun), by Gooden et al. 83rd Legislature, Regular Session, 2013.

Those opposed to an open carry law in Texas say that openly carrying firearms intimidates citizens. Opponents say that in other states that have open carry laws, there have not been assurances put in place that guarantee that the person who is openly carrying a gun has gone through a background check or has a valid open carry license. Opponents also say that those with post-traumatic stress disorder (PTSD) who see someone openly carrying a firearm could have a PTSD event triggered.

Proponents of open carry say that openly carrying a firearm is a crime deterrent. They contend that the Second Amendment allows for the right to bear arms and therefore to openly carry weapons. Proponents also say that openly carrying a firearm should be legal because it is difficult to conceal certain types of handguns on certain body types.

The 84th Legislature may consider legislation to allow for Texans to openly carry certain firearms.





## **BORDER ISSUES**

### **Improved Traffic Flow**

Trade between the United States and Mexico is one of the largest in the world. Accounting for nearly 40 percent of imports into the United States, Mexico is perhaps the most valuable trade partner for the country. Bottlenecks at international bridges between the United States, particularly in Texas, and Mexico are causing local businesses to suffer economically. Proponents say that if something is not done to ease traffic flow, then by 2035, congestion on bridges will cost the regional economy approximately \$54 billion and around 850,000 jobs will be lost. Because bridges between the countries close at different times, companies are losing valuable time they could use to ship goods, with a resulting loss of profit.

With a greater amount of cargo crossing the border, it will be necessary to address potential capacity issues. Current infrastructure could be modified by adding staff and technology in order to process people in a more efficient and effective manner. Additionally, new facilities could be built that would address transportation concerns along bridges.

The 84th Legislature may examine ways to coordinate more effectively with Mexican authorities to create consistent rules in both countries so that there is a uniform process for all vehicles traveling between the two countries. The 84th Legislature may also examine ways to separate facilities for commercial vehicles from passenger vehicles so that traffic moves more smoothly.

### **Produce Inspectors**

According to the Texas International Produce Association, about 40 percent of all fruits and vegetables consumed in the United States come from Mexico and nearly half of those shipments pass through Texas ports-of-entry. With the number of produce shipments expected to increase in coming years, some officials question whether ports-of-entry are properly staffed. Some experts believe that entry ports along the border are approximately 4,000 federal inspectors short of the recommended number. Others believe that 4,000 inspectors for produce is too many and may even increase wait times.

Wait times at the border average around 54 minutes per vehicle and the volume of traffic is expected to grow in the coming years. With the enactment of stricter regulations to

ensure a safe food supply, the amount of produce that could become spoiled is expected to increase, which would cost companies money.

The 84th Legislature may examine ways to increase the number of produce inspectors at border crossings in Texas while also improving infrastructure in order to decrease the wait times for people attempting to enter the country.

### **Radio Frequency Identification Readers**

Officials have examined ways of expediting the time that freight spends trying to cross the United States-Mexico border. With wait times that can last for hours at a time per vehicle, administrators have begun to measure wait times on both sides of the border and determine ways that vehicles can be moved through more quickly. One method that is being considered is a collaborative project involving the Texas Department of Transportation, the Federal Highway Administration, and the Texas A&M Transportation Institute that will use radio-frequency identification (RFID) readers.

With five of the most heavily used border crossings located in Texas, RFID tags have been placed on trucks in order to gather information revealing the time it takes a commercial vehicle to move from one side of the border to the other. This data is transmitted to United States Customs and Border Protection, the Texas Department of Public Safety, and private-sector stakeholders such as shippers and international bridge operators. The data provided will ultimately help to ease the congestion and decrease the time spent idling.

Proponents believe that the technology will provide a way for officials to maximize existing infrastructure instead of building facilities that may not solve congestion problems. Opponents have raised questions over how much equipping every vehicle with a tag would cost and whether the benefits received would be worth the cost.

The 84th Legislature may consider adopting RFID tags for more vehicles transporting goods across the United States-Mexico border. The 84th Legislature may also consider requiring tags for other vehicles in order to obtain accurate and consistent information regarding wait times for all vehicles crossing the border.

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**BUDGET**

**Fiscal Year 2016-2017 Budget Instructions**

On June 23, 2014, the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning and Policy (GOBPP) issued a memorandum detailing instructions for agency and institution of higher education (IHE) legislative appropriations requests (LARs) for the 2016-2017 biennium.

Under the instructions set forth in that memorandum, an agency's baseline request for general revenue-related (GR and GR-dedicated) funds may not exceed the sum of amounts expended in fiscal year 2014 and budgeted in fiscal year 2015. Agencies must also submit a supplemental schedule detailing how they would reduce the baseline request by an additional 10 percent (in five percent increments) in general revenue and general revenue-dedicated funds.

Exceptions to the baseline request limitation include amounts necessary to maintain funding for the Foundation School Program, satisfy debt service requirements for bond authorizations, maintain benefits and eligibility in Medicaid entitlement programs, the Children's Health Insurance Program (CHIP), the foster care program, the adoption subsidies program, and the permanency care assistance program, and satisfy employer contribution requirements for state pension systems and employee group benefits, although group benefit modifications may be considered. Funding requests for other purposes that exceed the baseline spending level may not be included in the baseline request but may be submitted as exceptional items.

**S.B. 1, General Appropriations Act, 83rd Legislature, Regular Session**

The 2014–2015 biennial budget includes appropriations for state government operations that total \$200.4 billion in All Funds. The 2014–2015 biennial budget includes estimated appropriations of \$95 billion from general revenue (GR) funds, \$7.3 billion from GR–dedicated funds, \$68.7 billion from federal funds, and \$29.4 billion from other funds. The All Funds Budget represents a total increase of \$9.6 billion, or 4.9 percent, from the 2012–2013 biennial budget.

The two greatest dollar amount increases in the All Funds Budget occur in the health and human services and business and economic development functions while the regulatory function received the greatest percentage increase. The higher education function received the largest dollar amount and percentage decrease. The \$5.4 billion decrease to

the higher education function was a result of the removal of \$6.1 billion in patient income as a method of finance for health-related institutions; excluding this change in appropriations, higher education All Funds appropriations increased by 3.8 percent.

### **Factors Affecting Spending**

#### Pay-As-You-Go Limit

Article III, Section 49a, of the Texas Constitution prohibits the legislature from appropriating more revenue than will be collected during the biennium unless the appropriation is approved by a four-fifths vote of each house. Under the Tax Relief Amendment of 1978, the growth of appropriations from state tax revenues not dedicated by the constitution is limited to the estimated growth of the state's economy.

Once an appropriations bill is passed by the legislature, the comptroller of public accounts must determine whether anticipated revenue will be sufficient to cover appropriations. If the comptroller determines that the appropriations bill is within the constitutional limit, the bill is certified and sent to the governor for approval. If the comptroller determines that the bill appropriates more than the amount of anticipated revenue, thus exceeding the constitutional limit, the bill must be returned to the house in which it originated, where steps may be taken to bring the appropriations within the amount of anticipated revenue.

#### Welfare Spending Limit

Article III, Section 51-a, of the Texas Constitution provides that the amount that may be expended from funds for assistance grants to or on behalf of needy dependent children and their caretakers (Temporary Assistance for Needy Families, or TANF) shall not exceed one percent of the state budget in any biennium.

#### Limit on the Growth of Certain Appropriations (Spending Limits)

The Texas Constitution, under Article VIII, Section 22, limits the biennial rate of growth of appropriations from state tax revenue not dedicated by the constitution to the estimated rate of growth of the state's economy. The LBB adopts items of information, which include the estimated rate of growth of the Texas economy as measured by personal income; the 2014-2015 level of appropriations supported by the state tax revenue not dedicated by the constitution (the base biennium); and the limit on appropriations or the constitutional spending limit for the 2016-2017 biennium. The limit on appropriations for

the 2016-2017 biennium is determined by multiplying the 2014-2015 base budget by the growth of Texans' personal income from the 2014-2015 biennium to the 2016-2017 biennium.

### State Indebtedness

Article III, Section 49-j, of the Texas Constitution provides that the maximum annual debt service in any fiscal year on state debt payable from the GR fund may not exceed five percent of an amount equal to the average of the amount of GR fund revenues, excluding revenues constitutionally dedicated for purposes other than payment of state debt, for the three immediately preceding fiscal years. Bonds and agreements initially required to be repaid from GR funds would be subject to the debt ceiling provision if GR funds were subsequently needed to repay the obligations.

### Economic Stabilization Fund

The Economic Stabilization Fund (ESF), or rainy day fund, is a constitutional fund that was created by the state's voters in 1988. Whenever collections are sufficient, the fund receives an amount of GR equal to 75 percent of the amount of oil production tax collections in excess of 1987 levels, and 75 percent of the amount of natural gas tax collections in excess of 1987 levels. The fund also receives one-half of any unencumbered GR funds balance at the end of each biennium. The legislature may also appropriate revenue to the fund. The legislature may appropriate amounts from the ESF at any time and for any purpose by a two-thirds vote of the members present in each house.

## **Finance and Revenue**

### Border Security Costs

Due to an influx in undocumented immigration and unaccompanied alien children seeking asylum in Texas, Governor Rick Perry ordered "Operation Strong Safety II," which began on June 18, 2014, and the deployment of the National Guard to the Texas-Mexico border, which began on July 21, 2014. The estimated cost for combined Department of Public Safety (DPS) and National Guard deployment is \$17 million to \$18 million per month. The first \$38 million acquired to cover the costs of these programs came from the Emergency Radio Infrastructure Fund (ERIF), per gubernatorial order. ERIF is a General Revenue-Dedicated account for which public safety is one of the allowable uses.

In addition to DPS and National Guard deployment costs, the cost of education of unaccompanied alien children, increased Medicaid emergency costs, and additional funds to cover accelerated wear on DPS vehicles and equipment may need to be considered for the next biennium.

Until a new budget is complete, there are three funding options for covering border security operations. The first is the budget execution measure found in Chapter 317 (State Budget Execution), Government Code, which allows the governor or the Legislative Budget Board (LBB) to propose transfer of existing appropriations from one agency or program to another. Both agencies and/or programs must approve the transfer. In a budget execution, statutory dedications may be superseded. The second funding option is a disaster declaration by the governor as defined in Section 418.014 (Declaration of State of Disaster), Government Code. Upon declaration, Article IX, Section 14.04, of S.B. 1, General Appropriations Act, 83rd Legislature, Regular Session, allows for transfer of funds between agencies and programs. Any transfer has to be agreed to by both the governor and the LBB. Statutory dedications may not be superseded when transferring funds during a disaster declaration. The final option for current border operations funding is through an emergency declaration by the governor as provided for in Article I of S.B. 1, General Appropriations Act, 83rd Legislature, Regular Session. Upon the governor's certification of an emergency to the Comptroller of Public Accounts, Rider 2 appropriates to an agency funded from special funds additional available balance amounts to address the emergency.

The LBB has stated that state expenditures might also be reimbursed by the federal government.

The 84th Legislature may consider issues related to the reimbursement of ERIF, the payment of additional costs related to border security operations, and future expected costs from undocumented immigration and unaccompanied alien children seeking asylum in Texas.

### Estimating Growth for the Spending Limit

Article III (Legislative Department) and Article VIII (Taxation and Revenue), Texas Constitution, contain four limitations on state spending: the pay-as-you-go limit, the welfare spending limit, the debt limit, and the limit on the growth of certain appropriations or "spending" limit. The state spending limit requires that the rate of growth of appropriations from state revenue not dedicated by the constitution not exceed the estimated rate of growth of the state's economy. Only appropriations funded with tax revenue not dedicated by the Texas Constitution, such as revenue derived from the sales tax, motor vehicle sales tax, franchise tax, and cigarette and tobacco taxes, are subject to

the spending limit. Section 316.002 (Duties of Legislative Budget Board), Government Code, directs the Legislative Budget Board (LBB) to use Texas' personal income growth to measure growth in the state's economy. In most cases, the LBB adopts a personal income growth rate, which is then used to establish the spending limit for the upcoming legislative session.

For example, the limit on appropriations for the 2016-2017 biennium will be determined by multiplying the 2014-2015 base budget by the growth of Texans' personal income from the 2014-2015 biennium to the 2016-2017 biennium. The majority of states use a similar method for determining economic growth when considering spending limits. Some states, however, still use a growth estimate method that utilizes the state population growth plus inflation. During the interim, the Senate Committee on Finance asked LBB representatives about the impact of changing its estimation method to one that uses population growth plus inflation. Additional alternative growth estimation methodologies include using the gross state product rather than personal income growth to determine the state spending limit; basing the spending limit on the lesser of personal income growth, population growth, and the inflation rate or gross state product; and setting the state spending limit based on the consumer price index and overall population growth.

The 84th Legislature may consider issues related to the state's current spending limits and possible statutory changes to the method used for estimating economic growth.

### Proposition 1

The November 2014 statewide ballot included a measure, Proposition 1, to amend the constitution to provide for the use and dedication of certain money to be transferred to the state highway fund. The proposition was approved by the voters. This amendment, authorized by S.J.R. 1, 83rd Legislature, Third Called Session, 2013, will transfer an estimated \$1.7 billion from the Economic Stabilization Fund to the State Highway Fund in the first year, with subsequent deposits to be made annually. The funds can only be used for construction, maintenance, rehabilitation, and acquisition of right-of-way for public roads. According to H.B. 1, 83rd Legislature, Third Called Session, 2013, these funds cannot be used for toll roads.

The 84th Legislature may consider issues relating to identifying methods of replacing the funds removed from the Economic Stabilization Fund.

### Public Education Finance

As student enrollment increases, the overall cost of public education also increases, the full cost of which is borne by the state. For the 2014-2015 biennial budget enrollment,

student enrollment is assumed to increase by 1.7 percent with a projected cost to the state of \$2.2 billion. An increase in school property value growth decreases the amount of revenue the state is required to allocate for public education. The revenue increase expected from rising school district property values for 2014 is 4.03 percent, resulting in \$2.8 billion in savings to the state. One-time costs of district underpayments paid in the 2012-2013 biennial budget and recovery of fiscal year 2013 overpayments in fiscal year 2014 is expected to result in \$800 million being returned to the state. Other costs, based on enrichment growth assumptions and facilities needs, are expected to be \$500 million. The total result of 2014-2015 biennial budget public education cost drivers over the 2012-2013 biennial budget base is expected to be a savings to the state of \$900 million.

The 84th Legislature may consider issues relating to Texas public education funding to address increasing school property value, underpayments, growth assumptions, and facilities costs.

### Public Education Finance Court Rulings

In August 2014, state district Judge John Dietz ruled that the state's school finance system unconstitutionally imposes a state property tax and falls short of fulfilling the state's public education goals. The ruling came after many school districts sued the state following a \$5 billion cut to public education in the budget written in 2011. Dietz ordered the state to institute fixes to the state's school finance system by July 15, 2015. The state is expected to appeal Dietz's decision.

The 84th Legislature may consider issues relating to Texas public education funding to address the court's decision.

### Water Infrastructure Financing

The 83rd Legislature enacted three pieces of legislation relating to water infrastructure financing. H.B. 4, 83rd Legislature, Regular Session, established the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT). S.J.R. 1, 83rd Legislature, Regular Session, which was approved by voters on November 5, 2013, created SWIFT and SWIRFT to constitutionally dedicate any money in the funds. H.B. 1025, 83rd Legislature, Regular Session, appropriated \$2 billion to the Texas Water Development Board (TWDB) for SWIFT.

The objective of SWIFT and SWIRFT is to provide financial assistance to ensure adequate future water supplies for Texas. The programs support low-interest loans, provide longer repayment terms compared to other available financing, do not include



any grant funding, and do not allow general revenue to be used for debt service. TWDB expects to leverage \$27 billion in loan funding over 50 years through the programs and ensure perpetuity of the original \$2 billion. The Texas Treasury Safekeeping Trust Company will manage investment of SWIFT and SWIRFT. The funds will be used for existing TWDB programs as provided by legislation.

The deadline for TWDB to adopt SWIFT rules is March 1, 2015. TWDB will identify the prioritization process and projects to be funded by the summer of 2015.

The 84th Legislature may consider issues related to the rules of SWIFT and SWIRFT, which TWDB programs will be funded by the programs, and what projects should be prioritized by TWDB.



## **BUSINESS AND COMMERCE**

### **Advanced Metering Infrastructure**

A “smart meter” is an electronic metering device that uses radio frequencies to communicate detailed usage data to electric utility providers. Traditional meters require an agent of an electric utility provider to collect the meter data on site.

Critics of smart meter technology allege that the meters' radio transmissions have cumulative negative health effects, including the disruption of pacemakers and implanted defibrillators. While smart meters emit radiofrequency radiation, the amount of radiation is similar to that emitted by a cellular telephone, which has not been shown to cause adverse health effects. The Public Utility Commission (PUC) conducted a staff review of research regarding the health effects of radiofrequency fields and did not find any dispositive studies indicating a significant health concern. Opponents have also raised concerns about customer privacy. They are concerned that a utility provider with access to detailed customer usage data could extrapolate information about household activities from usage statistics.

Advocates of smart meters say that statewide adoption of advanced metering infrastructure will facilitate more efficient energy consumption by providing customers with information about their day-to-day usage.

In August 2013, PUC adopted a rule that provided an opt-out process for Texans concerned about health, privacy, or other issues.

The 84th Legislature may consider legislation regarding advanced metering infrastructure.

### **Payday Lenders**

Payday lending is a multi-billion dollar industry in Texas. Payday lenders offer short-term, high-interest loans, often to low-income borrowers. Currently, there are no limits to the fees that companies can charge, and no restrictions on how companies can collect their debts. There is a growing concern that these small loans, the majority of which average \$500 or less, are trapping consumers in a cycle of debt as they take out new loans to pay off old ones.

Payday lending companies often use aggressive tactics to collect unpaid loans. Consumers have complained to the Office of Consumer Credit Commissioner that some companies have threatened them with jail time and repossession of their vehicles, and have even harassed their employers.

These lenders are registered as credit service organizations (CSO). Because Texas does not regulate CSOs, it does not collect data on how many short-term, high-interest loans exist or how much consumers spend rolling unpaid debts to new loans. In 2009, Appleseed, a nonprofit network of public interest justice centers, published a survey of 5,000 low-income and middle-income Texas families about payday loans. Nearly one in 10 borrowed money every month. More than half of the borrowers extended the loans at least once before paying them off, and a quarter of them extended the loans multiple times.

As CSOs, payday lenders can charge broker fees that increase the effective interest rate to over 500 percent in some cases.

The 84th Legislature may consider legislation regarding the regulation of payday loan companies.

### **The Texas FAIR Plan Association**

Lieutenant Governor Dewhurst issued an interim charge to the Senate Committee on Business and Commerce to review the Texas Fair Access to Insurance Requirements (FAIR) Plan Association's (TFPA) organizational and financial structure to assess the cause of its current debt and reduce the total insured exposure of the FAIR Plan.

The FAIR Plan lacked office space, employees, and equipment necessary for implementation when it was activated. In 2002, the Texas Windstorm Insurance Association (TWIA) entered into an agreement with TFPA to provide services necessary to operate and manage TFPA on a daily basis. Currently, TWIA and TFPA operate under a shared management team and share claims services and support services, including human resources and accounting. However, TWIA and TFPA are governed by separate statutes and their underwriting departments operate separately.

TFPA-controllable expenses have been at or below budget from 2011 through June of 2014. The 2013 year-end deficit of \$13.4 million was eliminated as of June 2014, five months earlier than projected.

The 84th Legislature may consider legislation regarding the governance of TFPA.

### **Oversight of the Texas Windstorm Insurance Association**

Weaknesses in the funding structure of the Texas Windstorm Insurance Association (TWIA) appeared in 2008 after hurricanes Dolly and Ike caused an estimated \$3 billion in damages and generated over 100,000 claims. H.B. 4409, 81st Legislature, Regular Session, 2009, changed the funding structure of TWIA to cover losses up to \$2.5 billion through the sale of public securities. The bill also limited the exposure of member insurers, allowing them to better calculate risk and make them less likely to exit the Texas insurance market or aggressively raise rates.

Concerns about TWIA's management activities following the hurricanes led the Texas Department of Insurance (TDI) to place TWIA under administrative oversight. TDI reduced the scope of its oversight of TWIA in March 2014 in recognition of improvements and changes implemented at TWIA. TDI continues administrative oversight of TWIA with focus on its executive-level personnel decisions, reinsurance agreements, non-standard contracts, and financial reports.

John Polak, general manager of TWIA, testified at a 2014 interim hearing of the Senate Committee on Business and Commerce that, assuming the successful issuance of pre-event bonds, TWIA effectively has \$3.9 billion on hand, putting itself within \$1 billion of solvency for a one-in-one-hundred event.

The 84th Legislature may consider legislation regarding the oversight and operations of the Texas Windstorm Insurance Association.

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**CRIMINAL JUSTICE**

**Age to Charge Juveniles as Adults**

Only four states—New York, North Carolina, New Hampshire, and Texas—charge 17-year-olds as adults. The remaining states charge individuals as adults only after they reach 18 years of age. The age difference between the four states and the rest of the nation has created disparity in certain scenarios such as capital sentencing.

Proponents of raising the age at which a defendant can be tried as an adult to 18 argue that 17-year-olds have not yet fully developed cognitive functions that make them accountable for their actions. Experts believe that individuals under 18 years old are inherently less likely to contemplate the possible consequences of their actions, are more likely to behave in a risky manner, and are more vulnerable and susceptible to negative encouragements. Proponents also argue that the majority of 17-year-olds charged as adults are charged with low-level offenses that could be handled in ways that would not impose upon them an adult criminal record or cause them to be exposed to a jail setting.

The 84th Legislature may consider raising the age at which youths may be charged as adults from 17 to 18 years of age.

**Cost of Providing Care for Prisoners**

There are approximately 165,000 prisoners incarcerated in Texas, which makes it the state with the largest prison population in the nation. It costs approximately \$21,390 to incarcerate a prisoner for one year, a total of some \$3 billion annually. Prisons are operating at 23.7 percent over budget, due to the high number of prisoners. According to studies, state corrections departments pay most of the cost of prisons, but other state government agencies may take on some of the costs.

Elected officials state that the amount needed to house and provide for prisoners is too high and must be reduced. A 2007 projection indicated that more than 17,000 prison beds needed to be constructed, at a cost of more than \$2 billion. Alternatives, such as allowing those convicted of drug possession offenses to be sentenced to probation instead of being incarcerated, allowed the state to save money and avoid building additional beds. Some advocates state that people who should be on probation are instead placed in jails, which raises the price that taxpayers must pay. Opponents have stated, however,

that the high number of prisoners is because Texas is a large state, and that the system is deliberately tough to discourage crime.

The 84th Legislature may consider legislation designed to strengthen cost-effective community corrections programs that prevent re-offenses; foster the use of evidence-based supervision practices in probation departments; and provide alternative sentencing methods so that fewer people are incarcerated in order to lower the total cost for providing care for prisoners.

### **Death Penalty Policies**

Since the practice was resumed in 1976, Texas has executed more inmates than any state in the nation. The state has used pentobarbital since 2012 for lethal injections, but questions have been raised over how and where the drug has been obtained and how it has been used. Some officials have said that there is a lack of transparency concerning the drug and have wondered if botched executions could result in violations of the Eighth Amendment regarding cruel and unusual punishment.

Opponents of the death penalty state that a lack of transparency regarding the drugs used in the execution process is problematic, given that such drugs may not be regulated by the federal Food and Drug Administration. The Texas Department of Criminal Justice stated that they have disclosed the types of drugs that they use but that revealing the pharmacies that supply the drugs has resulted in threats of physical violence against the pharmacies' employees in the past.

The 84th Legislature may consider ways to improve and modify transparency of all policies and procedures involving the death penalty.

### **Forensic DNA Testing**

On February 5, 2014, the Texas Court of Criminal Appeals reaffirmed that a person seeking DNA testing of evidence under Chapter 64 (Motion for Forensic DNA Testing), Code of Criminal Procedure, must establish that the evidence contains biological material. In 2010, the court denied a Chapter 64 motion by Larry Ray Swearingen, who was convicted of capital murder and was seeking the testing of certain evidence, in part because Swearingen could not establish that the evidence contained biological material. The 82nd Legislature, Regular Session, 2011, enacted S.B. 1616, which amends Chapter 64 to define "biological material."

The court held that these amendments did not impact its 2010 decision. Because Swearingen could not establish that certain evidence contained biological material, the court ruled that he was therefore not entitled to testing regarding that evidence.

Some argue that the 2012 decision makes it more difficult for defendants to seek DNA testing under Chapter 64, as a defendant would have to establish that the evidence contains biological material, but it may not be possible to determine whether the evidence contains biological material without such testing. Proponents of expanding DNA testing point to improved forensic technology and the number of wrongfully convicted persons who have been exonerated because of DNA testing. Opponents assert that expanding DNA testing would result in unreasonable delays and deprive victims' families of closure.

The 84th Legislature may consider legislation related to forensic DNA testing.

### **Graffiti Offenses**

In recent years, Texas cities have increased their efforts to address and prevent graffiti. Concerns have been raised that graffiti can lead to community decay and dangerous crime. Erasing graffiti markings can cost millions of dollars. Some cities have attempted to prevent graffiti by educating people about the offense, while officials in other cities have opted to arrest those accused of vandalizing property. Despite these efforts, officials state that there has been no noticeable decrease in the number of graffiti offenses.

While efforts have been made to reduce graffiti crimes, such as erasing the offending marks within 48 hours or encouraging artists to create murals, officials note that more needs to be done in order to curb the vandalism. Some who oppose criminalizing the act of graffiti argue that doing so adds costs without providing any true relief to communities. They argue that the enforcement of and incarceration for graffiti offenses leads to high costs in the short term and ultimately criminalizes individuals, many of them youths, for their entire life.

The 84th Legislature may consider "rapid response" models in order to quickly eradicate graffiti as well as establishing programs to redirect graffiti artists into community supervision and community-sponsored art projects.

### **Human Trafficking Victims**

Human trafficking continues to be a significant issue within Texas, the United States, and internationally. In Texas, the crime is undertaken by criminal organizations and individuals who target male and female victims of different ages, nationalities, and

socioeconomic classes. According to research based on the number of calls to the National Human Trafficking Resource Center tip line, Houston is thought to have the most victims of human trafficking in the United States. In 2013, more than 144 trafficking cases were reported to the FBI from Houston alone, with a total of 436 coming from the entire state.

Officials believe that measures currently used to assess human trafficking in Texas provide a limited view of the threat of human trafficking. It has been argued that developing a comprehensive understanding of the threat of human trafficking requires consideration of multiple related offenses, such as compelling and promoting prostitution, sexual exploitation, forced labor, and human smuggling. Officials note that as the use of social media continues to expand and evolve within the general population, traffickers may use the technology to communicate with and recruit potential victims as well as to communicate with customers.

Law enforcement officials state that sex trafficking is the fastest growing segment of organized crime and the third most prevalent criminal act in the world, with children between the ages of 12 and 14 the primary victims. Sex traffickers in Texas typically target juvenile runaways, undocumented aliens, and other vulnerable victims using force, fraud, or intimidation.

The 84th Legislature may consider enacting legislation to enhance the state's ability to detect, assess, and prioritize threats to the safety and security of its citizens while stringently punishing those caught engaging in human trafficking activities.

### **Mental Health Policies for Inmates**

Community-based mental health care is funded mostly by the Texas state government. Of the 9,000 inmates in the Harris County Jail, more than a quarter take some form of medication for mental illness. According to the *Texas Tribune*, a study by the Texas Department of Criminal Justice of violent incidents at 99 state prisons from 2006 to 2012 found that most took place at facilities with high numbers of mentally ill, violent offenders. With state systems facing an increase in the number of prisoners requiring psychiatric care, proponents say that facilities must be examined to ensure that inmates are receiving appropriate care.

Officials have raised questions regarding whether staff at these facilities are properly trained to deal with the high number of inmates who require special care. Additionally, officials note that prisoners may not receive the medication that they need, which can ultimately result in violent behavior by inmates. It has also been asserted that some patients with undiagnosed mental health issues are placed in jails and, as a result, do not



receive proper care. These undiagnosed conditions can lead to dangerous scenarios for both the inmates and officials working at prisons.

The 84th Legislature may consider legislation that provides additional therapists and doctors to facilities so that inmates can receive suitable assistance and staff members can obtain training to deal with mental health issues.

### **Registered Sex Offenders**

The Texas Sex Offender Registration Act (SORA), codified in Chapter 62 of the Texas Code of Criminal Procedure, requires persons convicted of certain sexual offenses to register as sex offenders. In some cases, a person may be required to register for consensual or nonviolent sexual activity. There are approximately 80,000 sex offenders required to register in the state. Over the years, the legislature has expanded the number of offenses requiring registration.

Requiring persons to register as sex offenders impacts them and their families, notably in terms of employment and housing, factors that are important to rehabilitating offenders. Although Texas has no statewide residency restriction law, municipalities throughout the state are adopting ordinances limiting where persons required to register under SORA may live or work. Texas Attorney General Greg Abbott has held that state law does not preempt a home-rule municipality from enacting an ordinance prohibiting registered sex offenders from living within a specified distance from locations where children typically congregate. On July 22, 2014, a three-judge panel of the United States Fifth Circuit Court of Appeals held that a registered sex offender has standing to sue the City of Lewisville, Texas, over a city ordinance that barred sex offenders from a 1,500-foot buffer zone around any place where children regularly gather, which the plaintiff and his family claimed effectively barred them from almost all of the housing in the city.

Proponents of such ordinances assert they are designed to protect public safety and welfare, especially for children. Some supporters of such restrictions also argue that because other cities have already imposed residency and work restrictions on sex offenders, these offenders may move to cities without such restrictions unless those cities enact similar restrictions to protect their own citizens. Critics argue that there is no evidence that residency restrictions promote public safety. They assert that overly harsh restrictions may actually put the public at more risk, by effectively depriving sex offenders the ability to find places to live and work, forcing them to move away from family and other support groups, making it more difficult for them to seek therapy and other rehabilitation services, and discouraging sex offenders from registering and otherwise complying with sexual offender laws. Other opponents question the constitutionality of such laws, arguing that many of these statutes deprive sex offenders of due process by imposing harsh restrictions on entire classes of offenders without

consideration of the individual offense or the actual dangerousness of the individual; subject offenders to double jeopardy by imposing additional punishment even after the offenders have completed their sentences; are sometimes so vaguely worded that it is not possible for an offender to determine what is necessary for compliance; and deprive offenders of the constitutional right to travel.

Another issue concerns the size and scope of the Texas registered sex offender program. The register has grown substantially, and some, including members of the law enforcement community, assert that the expanding list is preventing law enforcement from focusing on the most dangerous offenders and is increasing enforcement costs. Supporters of SORA argue that it promotes public safety by deterring persons from committing sexual offenses and providing notice to law enforcement and the public regarding sex offenders in their neighborhoods.

Proponents of reforming SORA argue that the list is too large to be of any real value to law enforcement or public safety and that many of the persons required to register as sex offenders present little danger to the public. They assert that there is little evidence that such registration protects the public and instead may actually do more harm by making it difficult for registrants to find housing or employment. Proponents of reform point to studies showing that recidivism rates for many offenders, particularly nonviolent, first-time, and youthful offenders, are very low. Some claim that requiring low-risk or nonviolent offenders to register does not contribute to public safety and is not a cost-effective use of law enforcement resources. Supporters of reform argue that the number of offenses covered by the registration law needs to be reviewed and that there needs to be more individual assessment of an offender's actual dangerousness and likelihood to reoffend before a person is required to register. Further, proponents argue for expanding and streamlining the current process for individual risk assessment and deregistration under the law, as well as expanding current exemptions.

Another issue is that under Texas law, the victim's age can be an aggravating factor for certain sexual offenses. For example, under the Penal Code, certain sexual conduct with a child, defined as a person under 17 years, can be deemed sexual assault or aggravated sexual assault, regardless of whether the victim consented to the contact. It is an affirmative defense to prosecution if the actor was not more than three years older than the victim and the victim was 14 years of age or older. On June 18, 2014, a divided Texas Court of Criminal Appeals affirmed the constitutionality of Section 22.021 (Aggravated Sexual Assault), Penal Code, which provides that sexual contact with a child younger than 17 years of age is aggravated sexual assault. In that case, the defendant, a 25-year-old male, had entered into a relationship with a person who claimed to be a 22-year-old, woman, when she was actually 13 years old. The victim in this case had posted information on social media asserting that she was a student at a local university. The defendant argued that Section 22.021 violated his right to due process because it did not require a culpable mental state regarding the victim's age and did not permit an

affirmative defense that he reasonably believed that the victim was 17 years of age or older.

Although the majority of the court held that such strict liability laws serve the legitimate state objective of protecting children, three justices dissented. The dissent noted that over time the age of consent has risen and that laws requiring the registration of sex offenders impose lifelong burdens on offenders. The dissent argued that persons have a fundamental right to be free of harsh criminal punishment when mental culpability is entirely absent and that defendants should be allowed to make an affirmative defense regarding the victim's age. Such a constitutionally required affirmative mistake-of-age defense, the dissent explained, would require that the defendant prove actual belief regarding the complainant's age and that the defendant exercised reasonable diligence regarding a sexual partner's age.

The 84th Legislature may consider legislation related to registration of sex offenders.

### **Revenge Porn**

Revenge porn is generally defined as the posting of nude or sexually explicit photographs of an individual on the Internet without that person's consent. These pictures may be uploaded to websites specializing in such photographs and include personal information about the individual, including the person's address and telephone number, as well as links to the person's social media accounts. In some cases, the website will take the person's picture down for a fee. While some of these pictures may have originally been taken by the individual or with the individual's consent for private use, others may be stolen from the person's personal computer or cell phone account by a computer hacker or be a composite image of the person's face or head superimposed on another's nude body. The same photographs may appear on multiple websites and victims often find it difficult, if not impossible, to remove the photographs from the Internet. Victims may be subjected to abuse and threats and some have felt it necessary to change their names, leave their jobs, or move to a new location. Often local law enforcement agencies are unable or unwilling to assist victims. Further, the federal Communications Decency Act protects online service providers and users from actions against them based on the content posted by third parties.

Arizona, California, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Maryland, Pennsylvania, Utah, Virginia, and Wisconsin have enacted laws seeking to address the issue of revenge porn. New Jersey has an older statute regarding the invasion of privacy that includes language applicable to revenge porn. H.B. 3627, introduced during the 83rd Legislature, Regular Session, 2013, would have imposed civil liability for publishing or promoting nude or sexually explicit pictures without the subject's consent, but did not get a hearing in committee.

Some have expressed concern that overly broad laws addressing revenge porn may violate the right of free speech and expression protected under the First Amendment to the United States Constitution, potentially criminalizing artistic or journalistic use of photographs or the publication of photographs in the public interest. Others argue that existing laws, such as copyright protections and laws criminalizing extortion or computer fraud and theft, already provide some protection for victims, and that victims may also file civil actions, such as for intentional infliction of emotional harm. Proponents of laws criminalizing revenge porn counter that such laws can be narrowly tailored, such as requiring proof that the person posting the images did so with intent to harm the victim and exempting certain pictures, such as those taken in public places or that are in the public interest. Proponents also assert that current criminal and civil laws are ineffective in addressing this issue.

The 84th Legislature may consider legislation related to revenge porn.

### **Texas Juvenile Justice Department Facilities**

During the 83rd Legislature, state budget writers cut \$23 million from the Texas Juvenile Justice Department's budget and ordered the agency to reduce the number of secure facilities for youths from six to five. This was done, in part, due to the high rates of violence and abuse for youths housed in certain facilities. Texas has approximately 1,050 youths in juvenile justice facilities, but due to the issues of violence and abuse, officials say that those in community facilities or on probation generally receive better supervision and care than those under state supervision.

Officials note that there has been a downward trend in the number of youths being sent to Texas' juvenile justice facilities, as judges have expressed doubt over whether they will be properly treated. Doubt has also been raised regarding whether youths with special needs receive proper accommodations and treatment. Proponents of a review of the juvenile system also note that the age between those in juvenile facilities fluctuates, with some being over 17 years old.

The 84th Legislature may consider legislation calling for a review of juvenile justice facilities in Texas. Additionally, the 84th Legislature may consider stricter punishments for facilities that are found to have mistreated incarcerated youths.



## **ECONOMIC DEVELOPMENT**

### **Impact of the Affordable Care Act on the Economic Development of the State**

The Senate Committee on Economic Development, as part of its interim charges, has examined the potential economic effects of the implementation of the Affordable Care Act (ACA), also known as Obamacare.

In addition to new coverage requirements for businesses of all sizes, the ACA imposes additional reporting requirements for employers that are costly and confusing. Opponents of the health care law have argued that these additional costs will result in companies employing fewer people in an attempt to minimize the financial impact of these costs. Proponents contend that, once the necessary resources are in place, employers will benefit from healthier and happier employees who are willing and able to work.

However, the Congressional Budget Office (CBO), in an analysis of the labor market effects of the ACA, predicts that the implementation of the ACA will likely have negative effects on the demand for labor by small businesses that employ approximately 50 full-time employees. The CBO predicts that many small businesses will eliminate full-time positions wherever possible to avoid coverage requirements or eliminate enough positions to fall below the 50-full-time-employee threshold for providing coverage.

The 84th Legislature may consider ways in which the costs to businesses associated with employing Texans under the Affordable Care Act may be lessened.

### **Licensing and Regulation of Occupations**

On July 6, 2012, the Texas Department of Licensing and Regulation (TDLR), along with the Texas Commission of Licensing and Regulation (TCLR), published a strategic plan for the fiscal years 2013 to 2017 that included a list of recommendations for statutory changes in order to "reduce the size of government, streamline regulation, better align resources, and strengthen consumer protection." As part of this plan, TDLR suggested that certain licensing programs be transferred to other state agencies that are better aligned with the functions and duties of those license programs, while suggesting that other licenses be eliminated altogether.

In 2013, the 83rd Legislature passed S.B. 242, which required TDLR to credit verified military service, training, or education toward the licensing requirements, other than

examination requirements, for a license issued by TDLR. This reduced the barriers to servicemen and women who have received occupational training while serving in the military.

During the 83rd legislative interim, the Senate Committee on Economic Development was charged with making recommendations for reducing barriers to entry for professions regulated by TDLR, including deregulation, additional reciprocity, and credit for military service. In a hearing on September 22, 2014, the Senate Committee on Economic Development heard testimony from Brian Francis, deputy director, TDLR, regarding TDLR's continuing efforts to reduce barriers to entry into the workforce for veterans as well as people moving to Texas from other states. Francis said that TDLR is continuing to evaluate licensing requirements to ensure that the requirements placed on licensees serve a public interest and is continuing to evaluate how TDLR might reduce licensing requirements without putting the public at risk.

The 84th Legislature may consider ways of further streamlining licensing and regulation requirements for businesses and individuals in Texas.

### **Oversight and Review of the Effectiveness of Economic Development Programs**

There are many programs designed to promote and bolster Texas' economy. These programs take the form of grants, low-interest loans, and tax incentives offered to companies in exchange for building facilities and employing Texans. Recently interested parties have raised concerns regarding the effectiveness of such programs. Critics say that such funds do not offer a reasonable return on the state's investment, while proponents contend that the funds are essential to the state's ability to attract business to the state. Audit and transparency requirements for these programs are set forth at each program's inception. The state does not currently have a standardized model for the audit and oversight of such economic development programs.

The Senate Committee on Economic Development, as part of its interim charges, was charged with studying and making recommendations to the legislature for the development of a biennial state review process for economic development programs to determine their effectiveness in keeping Texas economically competitive while ensuring taxpayer dollars are used wisely.

Of these programs, the Texas Enterprise Fund (TEF) is the largest and most visible. This state-operated "deal-closing" fund is administered and overseen by the Office of the Governor (governor's office). In 2013, the 83rd Legislature passed S.B. 1390, which required the Texas State Auditor's Office (SAO) to audit the TEF. The SAO concluded that hundreds of millions of dollars in state funds had been awarded to companies from the TEF with insufficient oversight. Interested parties have suggested the need to

strengthen the review and oversight processes for these funds, as well as ensure that the administrative and oversight functions for the programs not be housed within the same office or even the same branch of government. Critics say that the TEF lacks sufficient oversight to ensure that grants are awarded to companies that are able to meet agreed-upon performance goals. Additionally, concerns have been raised regarding the lowering of performance goals after grants have been awarded to companies. Proponents argue that adjustments to performance goals have been a necessary result of unforeseen issues and that the state's investment in these companies still offers a significant return on investment for taxpayers.

In a June 23, 2014, hearing of the Senate Committee on Open Government, the Texas Public Interest Research Group suggested that information relating to the state's ability to recoup funds granted to companies—especially those that go bankrupt—be made more available to the public. They argued for the revision of the processes by which the public gains information crucial to determining if the state has been able to recoup its initial investment, stating that the current system is unreasonably arduous.

In addition to greater transparency regarding the awarding and administration of funds granted to companies by the state, some legislators have expressed interest in the state investigating who might be adversely affected by these programs.

The 84th Legislature may consider ways to increase the transparency and accountability of Texas' economic development programs, as well as legislation to establish a standardized system of review and oversight of these programs.

### **Requiring Recipients of Unemployment Benefits to Submit to Drug Testing**

In 2013, the 83rd Legislature passed S.B. 21, which required certain applicants for unemployment benefits to submit to drug testing before receiving those benefits. As part of its interim charges, the Senate Committee on Economic Development investigated options for the implementation of S.B. 21.

The United States Congress made the drug testing of people applying for unemployment benefits possible through the passage of the Middle Class Tax Relief and Job Creation Act of 2012 (Act). The Act allows for the drug testing of applicants who have been terminated from their last place of employment as a result of drug use and those who are applying for a position that normally requires drug testing.

Proponents of this program and others like it believe that it is a method by which the state can be assured that those applying for unemployment benefits are taking the steps necessary to obtain employment, and is also a way to ensure that tax dollars are spent judiciously. However, critics argue that the administration of such a program would cost

taxpayers more money than it would save. There has also been some concern regarding the implementation of the program stemming from several court rulings in other states that have consistently narrowed similar laws.

Currently the Texas Workforce Commission is awaiting the creation of guidelines from the United States (U.S.) Department of Labor that would provide guidance for implementation, as well a list of jobs that would qualify an individual for drug testing. If these guidelines and job list are provided by the U.S. Department of Labor, the 84th Legislature may consider establishing rules for implementation of S.B. 21.





## **EDUCATION - HIGHER**

### **Closing the Gaps by 2015**

The Closing the Gaps by 2015 plan was adopted in October 2000 by the Texas Higher Education Coordinating Board (THECB) with support from the state's educational, business, and political communities. The plan is directed at closing educational gaps in Texas as well as between Texas and other states. It has four goals: to close the socioeconomic gaps in student participation, student success, excellence, and research.

Texas needs to record enrollment increases of 27,000 in fall 2014 and fall 2015 to meet the statewide enrollment goal for student participation of 630,000 more students in fall 2015 than in fall 2000, according to a THECB report published in June 2014. While black student enrollment met the 2015 target in the fall of 2009, Hispanic student enrollment is not on track to meet the 2015 target by 2015.

The number of students receiving undergraduate awards increased from 116,000 in 2000 to 243,000 in 2013, which met the goal of 221,000 students receiving a bachelor's degree, associate's degree, or certificate by 2015. While total awards goals were met, Texas is not on track to reach targets for total teacher certifications, mathematics and science certifications, and science, technology, engineering, and mathematics (STEM) awards.

H.B. 2550, passed in 2013 by the 83rd Legislature, Regular Session, directs institutions of higher education to collaborate with Texas high schools whose graduates have low college enrollment rates to increase enrollment, with special emphasis on dual credit opportunities for African American and Hispanic students.

The 84th Legislature may consider setting new goals to close gaps in Texas higher education.

### **College Affordability**

H.B. 3015, passed in 2003 by the 78th Legislature, Regular Session, delegated the legislature's authority to set tuition at public institutions of higher education to each university system's board of regents. This policy allowed universities to supplant state funding shortfalls with tuition increases. H.B. 3015 also required Texas institutions of higher education to set aside a portion of tuition revenue to provide financial assistance for undergraduate or graduate students to lessen the impact of tuition deregulation.

According to witness testimony at interim hearings of the Senate Committee on Higher Education in 2014, the cost of attendance is among the most frequent barriers to access to higher education. Since deregulation in 2003, the statewide average tuition rate has risen 104 percent. In 2011, Governor Perry addressed this issue by calling on public universities in Texas to offer a four-year degree program at a cost of \$10,000.

Universities report using increases in tuition revenue to recruit and retain faculty, increase course offerings, lower student/teacher ratios, enhance student services, maintain facilities, and provide additional financial aid to lower-income and middle-income students.

Institutions in The University of Texas System and The Texas A&M University System depend on income from the Permanent University Fund for capital construction and certain other capital expenditures. Other state universities receive money for construction from a special Higher Education Fund established by the legislature for that purpose.

The 84th Legislature may consider legislation regarding the affordability of higher education.

### **Outcomes-Based Funding**

Outcomes-based funding models for institutions of higher education (IHE) are a new strategy some states are using to incentivize colleges to improve higher education outcomes, including increasing the number of degrees granted and reducing the length of time taken by students to complete their degree.

Some IHEs have opposed outcomes-based funding models in order to preserve their base level of funding. Instead, they have proposed incorporating outcomes-based funding in addition to formula funding. IHE officials have expressed concern regarding the difficulty in determining a system of outcome metrics and targets that funds schools equitably. The needs of students, the types of institutions, and those institutions' purposes vary so widely in Texas that some opponents feel that an equitable funding formula cannot be achieved.

Currently, state funding formulas for IHEs do not include student success targets. The Texas Higher Education Coordinating Board (THECB) says that, in addition to increasing student access, Texas needs to increase student success in earning academic credentials to maintain economic competitiveness. THECB has proposed including student success metrics in funding formulas to spur innovation by institutions in order to strengthen support services for students such as counseling, tutoring, and degree planning.

The 84th Legislature may consider altering funding incentives for institutions of higher education.

### **Powers of University System Regents**

In 2013, the 83rd Legislature passed S.B. 15, a bill that placed limits on university regent power. S.B. 15 was vetoed by Governor Perry. At the time, legislators were accusing The University of Texas System Board of Regents of attempting to remove University of Texas at Austin President Bill Powers from his position.

Senator Seliger has filed a similar bill with a provision stating that regents cannot fire a university president without a recommendation from the chancellor. Currently, Texas statute authorizes university boards of regents to remove any officer from their respective system if necessary.

In 2012, allegations were made that The University of Texas System Board of Regents was trying to fire President Powers. During the 83rd Session, Representative Pitts filed a resolution to impeach Regent Wallace Hall, Jr., in response to his extensive student records requests. The House Select Committee on Transparency in State Agency Operations voted in August 2014 to censure Hall for misconduct and incompetence in the performance of official duties. Hall's records requests centered on President Powers and Hall's allegations of undue influence of lawmakers on the admissions process.

The 84th Legislature may consider legislation regulating the authority of university regents.

### **Teacher Shortages and Alternative Teacher Certification**

The Senate Committee on Higher Education was charged with examining improvements in teacher certification programs to address misalignment with teacher shortages and retaining new teachers.

Raymund Paredes, commissioner, Texas Higher Education Coordinating Board (THECB), testified at a July 22, 2014, hearing of the committee that teacher retention rates are a problem in Texas largely because teachers are inadequately compensated and insufficiently prepared for the classroom. He added that inadequate teacher compensation leads many high-achieving students to avoid the teacher pipeline entirely in favor of more lucrative professions.

Paredes expressed enthusiasm for the Texas Teacher Residency Program created by H.B. 1752, 83rd Legislature, Regular Session, 2013. The Texas Teacher Residency Program

will partner with a school district or charter school to provide teaching residencies for students who are pursuing a post-graduate degree. He stated that it is a promising approach to restructuring teacher preparation programs.

There are about 150 teacher preparation programs in Texas, 80 of which are university-based while the rest are alternative certification programs. From 2009 to 2013 the five-year teacher retention rate for traditionally certified teachers was 77 percent, while the retention rate was 69 percent for teachers who received alternative preparation.

The 84th Legislature may consider legislation regarding teacher certification and teacher retention.

### **Texas Dream Act**

With passage of H.B. 1403 by the 77th Legislature, Regular Session, 2001, Texas allowed undocumented students to pay in-state tuition at public universities. The bill provides that students must earn a high school diploma or GED in Texas, have lived in Texas for at least three years, and have signed an affidavit affirming that they are seeking legal residency.

According to the Texas Higher Education Coordinating Board, approximately 11,000 students paid in-state tuition under the provision from 2001 to 2006. Proponents of allowing undocumented immigrant students to pay in-state tuition argue that it protects the investment Texas has already made in the education of undocumented immigrant students.

Opponents argue that the law is unfair to U.S. citizens from other states that pay tuition at a higher rate than unauthorized residents. Opponents add that the law requires Texas taxpayers to subsidize the higher education costs for unauthorized residents.

Legislation to repeal H.B 1403 has failed so far.

The 84th Legislature may again consider legislation regarding the tuition rate paid by undocumented students.

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**EDUCATION – PUBLIC**

**Expansion of Pre-Kindergarten Programs**

Research generally shows that pre-kindergarten (pre-K) programs are beneficial, particularly for at-risk children. Children who participate in pre-K programs develop better language skills, score higher in school-readiness tests, and have better social skills and fewer behavior problems once they enter school.

Texas provides school districts with funding to cover half-day pre-K programs for at-risk students, including low-income students and students with limited English proficiency.

Pre-K programs vary across the state. About half of Texas school districts offer full-day state-funded pre-K programs. Nearly two-thirds of districts offer pre-K programs to students who do not qualify by using alternative funding or charging tuition.

The National Institute for Early Education Research estimates that 52 percent of four-year-olds in Texas were enrolled in state-funded pre-K programs in 2013, while another nine percent attended federal Head Start pre-K. According to the Texas Education Agency, there were 227,568 students enrolled in pre-K programs in Texas during the 2012-2013 school year, 86 percent of whom were economically disadvantaged.

In September 2014, Michael Williams, commissioner of education, announced plans to apply for a federal grant to expand pre-K in Texas. Groups including Children at Risk and Early Matters have called for lower student-to-teacher ratios and an expanded and improved pre-K system in Texas, including full-day pre-K for all at-risk children.

The 84th Legislature may consider legislation that would expand or improve pre-K programs in the state.

**High School Guidance Counselors**

According to the Texas Counseling Association, school counselors increase students' academic performance, significantly reduce their disruptive behaviors, and have proven to be effective in preventing students from committing suicide.

The American School Counselor Association recommends a 250-to-1 student-to-counselor ratio. Texas falls slightly below the national average of 471-to-1 at a 440-to-1 student-to-counselor ratio.

H.B. 5, passed by the 83rd Legislature, Regular Session, 2013, requires a principal of a high school to designate a high school counselor or school administrator to review personal graduation plans with each freshman student and their parent or guardian. It also requires that the review include the information about distinguished level of achievement, graduation requirements, and endorsements. It requires the student and the student's parent or guardian, before the conclusion of the ninth grade, to confirm and sign a personal graduation plan.

At an interim hearing of the Senate Committee on Education on April 14, 2014, several school district superintendents expressed concern about the ability of high school counselors to provide sufficient guidance to high school students about graduation requirements and endorsements. Several of the superintendents recommended a state-mandated student-to-school-counselor ratio closer to that recommended by the American School Counselor Association. Others recommended that the state reduce standardized testing requirements for counselors and use testing coordinators for that purpose to free up more time for counselors to provide direct guidance to students. Superintendents also expressed concern with the limited resources provided to counselors and the lack of awareness on the part of counselors, students, and parents about graduation requirements and endorsements.

The 84th Legislature may consider ways to improve the ability of high school guidance counselors to provide direct guidance to high school students about graduation requirements and endorsements.

### **High-Stakes Testing**

A high-stakes test is any test used to make important decisions about students, educators, schools, or districts, most commonly for the purpose of accountability. In recent years, high-stakes testing has come under heavy criticism for a variety of reasons, including that high-stakes tests are unfair to students that do not test well, have learning disabilities, or whose first language is not English; that high-stakes testing leads to increased grade retention and a higher drop-out rate; that high-stakes testing forces teachers to "teach to the test" and narrows curricula; that high-stakes testing drives good teachers out of education; and that high-stakes testing does not provide sufficient information to schools, students, parents, or the public.

Texans Advocating for Meaningful Student Assessment (TAMSA) is one of many organizations that have advocated for the elimination of or decreased emphasis on high-stakes tests in Texas. Many organizations have argued that state-mandated standardized tests should be used for diagnostic and statistical purposes only. Some states have never used or have eliminated high-stakes testing.

At a hearing of the Senate Committee on Education on April 14, 2014, a number of witnesses expressed concern with high-stakes testing and testified in support of diagnostic testing or statistical sampling.

At a hearing of the Senate Committee on Education on August 26, 2014, Senator Van de Putte expressed support for the possibility of Texas shifting away from high-stakes testing toward statistical sampling or diagnostic testing.

The 84th Legislature may consider studying whether alternatives to high-stakes testing would be better for Texas students, teachers, and schools.

### **Reduction in Number of Texas Essential Knowledge and Skills**

The Texas Essential Knowledge and Skills (TEKS) are state standards that determine what students should know and be able to do. The State Board of Education (SBOE) has legislative authority to adopt the TEKS for each subject of the required curriculum. SBOE members nominate educators, parents, business and industry representatives, and employers to serve on TEKS review committees.

In recent years there have been concerns regarding the increasing number of TEKS and perceived misalignment between TEKS and Texas College and Career Readiness Standards (CCRS).

In a hearing before the Senate Committee on Education on August 26, 2014, and hearings before the Senate Committee on Higher Education on July 22, 2014, and October 13, 2014, superintendents expressed concerns about the number of TEKS, claiming that the number of TEKS does not allow teachers to teach in depth on any particular topic and requires them to prioritize in order to cover all of the TEKS in a school year. One superintendent stated that the school district is unable to spend the desired amount of class time on student writing because teachers are pressured to cover all of the TEKS. Another superintendent said that the number of TEKS has grown so large that some TEKS have only been tested by one or two questions on State of Texas Assessments of Academic Readiness (STAAR) in the three years since the implementation of STAAR.

The 84th Legislature may consider whether action should be taken to direct the SBOE to streamline the TEKS to reduce their number and to align them more closely with CCRS.

### **School Discipline**

A 2011 report from the Council of State Governments found that six in 10 public school students in Texas were suspended or expelled from class between the seventh and twelfth grades. Because of concerns that using municipal and justice courts for school discipline exposes children to the adult criminal system and can impose hardships on children and their families, the Texas Legislature passed two bills related to school discipline. S.B. 393, 83rd Legislature, Regular Session, 2013, changed Texas law regarding children ticketed at school for Class C misdemeanors by allowing for deferral of prosecution of those students. S.B. 1114, 83rd Legislature, Regular Session, 2013, requires a law enforcement officer to submit an offense report and statements from witnesses and victims when issuing a citation to or filing a complaint about a child 12 years of age or older for an offense that is alleged to have occurred on school property or in a vehicle owned or operated by a county or independent school district.

Between 2013 and 2014, the number of student discipline cases filed in Texas juvenile courts dropped 83 percent. While some have considered the reduction in student discipline cases to be a result of legislation passed in the 83rd Legislature, others have expressed concerns. The superintendent of the Lampasas Independent School District has expressed concern that the new policies regarding student discipline will cause students to think that there are no legal or criminal consequences to misbehavior in schools. The police chief of the Aldine Independent School District has expressed concern that when disciplinary issues are handled internally, it is more difficult to ensure parental involvement.

The 84th Legislature may consider further legislation to address student discipline.

### **STAAR Exam**

The State of Texas Assessments of Academic Readiness (STAAR) was launched as a replacement for the Texas Assessment of Knowledge and Skills (TAKS) in 2012. The STAAR program includes annual assessments for: reading and mathematics for grades three through eight; writing at grades four and seven; science at grades five and eight; social studies at grade eight; and end-of-course (EOC) assessments for English I, English II, Algebra II, biology, and United States history. The STAAR program includes assessments for students receiving special education services and for English language learners (ELLs) who meet particular participation requirements.

#### Opting Out of EOC Exams in Favor of National Standardized Tests

H.B. 5 requires the commissioner of education to determine a method by which a student's satisfactory performance on an advanced placement test (AP), an international



baccalaureate (IB) examination, an SAT Subject Test, the SAT, the ACT, or any nationally recognized norm-referenced assessment instrument used by institutions of higher education to award course credit based on satisfactory performance on the assessment instrument shall be used to satisfy the requirements concerning EOC exam in an equivalent course.

Texas Administrative Code, Section 101.4002 (Title 19, Part 2, Chapter 101), lays out the assessments and scores that may be used in place of a corresponding EOC assessment to meet a student's assessment graduation requirements. For example, a student may substitute a score of 3 on the AP United States History examination or a score of 4 on the History of the Americas IB examination in place of the United States EOC assessment to meet the graduation requirements. Section 101.4002(b) states that an approved substitute assessment may be used in place of only one specific EOC assessment.

In a hearing before the Senate Committee on Education on August 16, 2014, Michael Williams, commissioner of education, stated that few students have opted to substitute assessments. Williams said that he was unsure of the reason that so few students have not taken advantage of the new rule and that he would return to the committee with more information.

The 84th Legislature may consider ways to increase public awareness about the option to substitute academic assessments or to encourage students to do so.

### Class of 2015 Graduation Rate

The class of 2015 will be the first class to graduate under the STAAR model.

As of August 26, 2014, approximately 48,000 students from the class of 2015 were not on track to graduate in May of 2015 because they had not passed one or more STAAR EOC examinations. Of those students, 22,000 students needed to pass only one EOC examination. Of the students needing to pass only one EOC examination, 59.4 percent needed only to pass the English II EOC examination. TEA officials have stated that fewer retesting opportunities for the English II EOC examination is a factor in the lower passing rate for that examination.

While students will be offered more opportunities to pass any EOC examinations they have yet to pass before the end of the 2014-2015 school year, many senators have expressed concern about the percentage of students who may not have passed all required EOC examinations before May 2015. Michael Williams, commissioner of education, testified that the increased rigor of the STAAR model compared to the Texas Assessment of Knowledge and Skills (TAKS) model previously used has resulted in a slower improvement in testing scores than was seen under the TAKS model. He also said that

he does not have the legal authority to allow any students to graduate who have not passed all of the EOC examinations.

The 84th Legislature may consider amending the graduation requirements for the class of 2015 to allow more of the class to graduate.

### **Technology**

Technology has revolutionized education. A 2012 study by the national nonprofit organization Project Tomorrow found that a large percentage of Texas students access the Internet at home but are rarely allowed to employ devices to access the Internet in the classroom. Technological proficiency is considered a requirement for success in today's economy and job market. H.C.R. 104, 83rd Legislature, Regular Session, 2013, provided that the legislature encourages school districts to adopt policies that promote the use of technology and technological devices in classrooms and required that the Texas secretary of state forward a copy of the resolution to the commissioner of education.

#### The Texas Virtual School Network

The Texas Virtual School Network (TxVSN) provides opportunities for students to take online courses for advanced placement, accelerated study, credit recovery, alternative education, schedule flexibility, and dual credit.

H.B. 1926, 83rd Legislature, Regular Session, 2013, sought to encourage the expansion of TxVSN by prohibiting a school district or open-enrollment charter school in which a student is enrolled as a full-time student from denying the request of a parent of a student to enroll the student in an electronic course offered through TxVSN. A school district or open-enrollment charter school is authorized to deny the request if a student attempts to enroll in a course load that is inconsistent with the student's high school graduation plan or requirements for college admission or industry certification, or if the district or school offers a substantially similar course. H.B. 1926 also authorizes districts and schools to decline to pay the cost for a student of more than three year-long electronic courses, or the equivalent, during a school year.

In a hearing before the Senate Committee on Education on August 27, 2014, Barbara Smith, TxVSN project director, Texas Education Agency (TEA), said that updates to the TxVSN website and TxVSN Online Schools Informed Choice Reports are still a work in progress. At that hearing, there was some concern expressed about the H.B. 1926 restriction stating that students cannot take a course that is substantially similar to one offered by their school district.

### Broadband Access

Some school districts, especially those in rural areas, experience less dependable Internet access. This has been a concern since the 74th Legislature passed H.B. 2128, which required telecommunications companies to offer broadband services to schools at a cost equivalent to 105 percent of the company's long-term incremental cost.

H.B. 1926, 83rd Legislature, Regular Session, 2013, required the commissioner of education to conduct a study to assess the network capability of each school district in Texas and complete the study no later than December 1, 2015. One witness who testified at the August 26, 2014 hearing before the Senate Committee on Education called on TEA to complete the broadband study as quickly as possible.

The 84th Legislature may consider ways to provide more flexibility to school districts to incorporate new technology and course delivery.

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**ETHICS**

**The Texas Ethics Commission's Recommended Statutory Changes**

During their October 29, 2014, meeting, the Texas Ethics Commission (TEC) approved recommendations for statutory changes to be delivered for consideration by the 84th Legislature. The recommendations that are likely to be considered by the 84th Legislature include legislation to:

- clarify that data entered into TEC's new electronic filing system is confidential until it is submitted for publication by the user;
- authorize candidates, officeholders, political committees, and other filers required to file reports with a local filing authority to use TEC's new electronic filing software to file required reports;
- amend Section 254.036 (Form of Report; Affidavit; Mailing of Forms), Election Code, to clearly permit a person filing an electronic campaign finance report with a local filing authority to file the report without requiring the report to be accompanied by a notarized affidavit, subject to the local filing authority having a system in place to issue passwords for such filings;
- authorize TEC to adopt rules prescribing how TEC will notify any person or provide any notice of filing requirements;
- simplify candidate and officeholder reporting requirements or legislation authorizing TEC to adopt rules that simplify reporting requirements;
- reduce the number of filing deadlines by simplifying the statutes or by authorizing TEC to adopt rules that reduce the number of filing deadlines;
- amend the Election Code to authorize a corporation or labor organization to make a political contribution to a political committee that intends to act exclusively as a "direct campaign expenditure only committee" as directed by the court in *Texans for Free Enterprise v. Texas Ethics Commission*;
- repeal Section 253.037(a), Election Code, which prohibits a general-purpose committee from knowingly making or authorizing a political contribution or political expenditure unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made and accepted political contributions from at least 10 persons, to bring it in line with the court's ruling in *Catholic Leadership Coalition of Texas v. Reisman*;
- repeal Sections 302.017 (Contributions and Loans From Organizations) and 302.019 (Individual Contributions; Campaign Expenditures), Government Code, to bring the statute in line with the court's ruling in *Free Market Foundation v. Reisman*;

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- authorize a person required to file a personal financial statement to use TEC software to prepare the report; and
- update and clarify the categories of information required to be disclosed in personal financial statements or authorize TEC to do so by rule.

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**GOVERNMENT ORGANIZATION**

**Transparency in State Agency Contracting and Procurement**

The Senate Committee on Government Organization was given an interim charge to review state agencies' monitoring and reporting of state contracts.

Billy Hamilton, chief financial officer, Texas A&M University; Mike Fernandez, director of administration, Texas Lottery Commission; and James Bass, chief financial officer, Texas Department of Transportation, have expressed support for statutory contracting oversight exemptions, stating that the exemptions expedite or facilitate the unique operations conducted by each agency.

The Texas Procurement and Support Services (TPASS) Historically Underutilized Business (HUB) Program was discussed at length at an interim hearing of the Senate Committee on Government Organization. Progress toward meeting HUB goals varies by agency. Witnesses testified that their respective agencies were either meeting their respective HUB goals or had active HUB Programs.

The 2009 Texas Disparity Study showed that statistical disparities by race, ethnicity, and gender classification still exist in prime contracting, the private marketplace, and firm earnings.

The 84th Legislature may consider legislation regarding state agency contracting procedures and oversight.



## **HEALTH AND HUMAN SERVICES**

### **Affordable Care Act**

The Affordable Care Act (ACA), commonly referred to as "Obamacare," was signed into law on March 23, 2010. The Act created state-based health insurance exchanges that allow consumers to visit websites to compare plans available to them and purchase the insurance of their choice during limited open enrollment periods. Under the ACA, setting up an exchange provided a state partial discretion on standards and prices of insurance plans offered in the state's exchange. If a state chose not to set up an exchange, the responsibility for doing so defaulted to the federal government. Texas is one of the 36 states that defaulted to federally facilitated exchanges.

Texas has a higher share of uninsured citizens than any other state. More than 730,000 Texans signed up for health coverage through the federal exchange by the April 1, 2014 deadline. It is unknown how many of those individuals were previously uninsured. It is also unknown how many of the more than 730,000 Texans who signed up for health coverage through the exchange paid their premiums.

Previously eligible but newly enrolled Texans account for a large percentage of the increase in Texas' Medicaid caseload. According to Kyle Janek, executive commissioner, Health and Human Services Commission (HHSC), the number of Texans receiving Medicaid will surpass four million in August 2014.

In a hearing before the Senate Committee on Health and Human Services on August 14, 2014, Janek said that the federal government has provided Texas with a number of flexibilities, including the nursing facility upper payment limit (UPL) and dual eligibility. He said that Texas is seeking information about further flexibilities, including the ability to question Medicaid applicants about assets and absent parents who might have insurance coverage. Janek said that the federal government has been slow to respond to Texas' flexibility requests and questions.

The 84th Legislature may consider legislation that would allow for greater flexibility in Medicaid expansion in the state as a result of the Affordable Care Act.

### **Alzheimer's Certification at Long-Term Care Facilities**

There are approximately 330,000 Texans living with Alzheimer's disease. Many of them live at long-term care facilities, including nursing or assisted living facilities. The Texas

Department of Aging and Disability Services (DADS) regulates nursing and assisted living facilities.

DADS surveys nursing facilities annually to ensure that they are in compliance with state licensure and federal certification regulations. DADS inspects assisted living facilities every two years to ensure that they are in compliance with state licensure regulations.

DADS offers optional Alzheimer's certification for nursing facilities and assisted living facilities. Rules for Alzheimer's certification of nursing facilities and assisted living facilities require additional staff training, planned and structured activity programs, and provisions for adequate security and supervision. In addition, there are advertising restrictions placed on facilities that choose not to seek Alzheimer's certification.

Nursing facilities and assisted living facilities currently may serve individuals without additional certification. Nursing facilities with locked units are not required to have Alzheimer's certification, while assisted living facilities with locked units are required to have Alzheimer's certification. Facilities that use delayed egress locking devices, which are similar to emergency door exits in restaurants and retail stores that sound an alarm when opened, are not considered locked units.

There are different requirements for certification of nursing facilities and assisted living facilities. Certified nursing facilities must meet a minimum staffing ratio and must have specially trained staff that are assigned to the Alzheimer's unit exclusively. Certified assisted living facilities do not need to meet a minimum staffing ration, and staff with special Alzheimer's training may work in other units.

At a hearing before the Joint Legislative Committee on Aging on October 2, 2014, Patty Ducayet, state long-term care ombudsman, recommended changing Texas law to require facilities with locked units that have a majority of residents with dementia to be Alzheimer's certified. Senator Huffman expressed concern that requiring more facilities to become certified would limit access to care and cause facilities to close, and suggested that a better approach might be to use clearer language to differentiate facilities that are not certified from those that are.

The 84th Legislature may consider legislation that would study the financial implications of requiring more facilities to obtain Alzheimer's certification or that would clarify the language used to describe facilities so that individuals or families seeking long-term care facilities are better informed.



### **Cancer Prevention Research Institute of Texas**

The Cancer Prevention Research Institute of Texas (CPRIT) was created through a constitutional amendment in 2007. Its goal is to expedite innovation and commercialization in the area of cancer research and to enhance access to evidence-based prevention programs and services throughout the state.

Since 2012, CPRIT has been at the center of a number of controversies related to ethics and oversight. CPRIT chief science officer Alfred Gilman resigned in protest over grants given to research incubator groups. Other CPRIT officials also resigned. CPRIT's former chief commercialization officer is facing trial for a felony corruption charge related to his work at CPRIT.

At an August 14, 2014, hearing before the Senate Committee on Health and Human Services, Wayne Roberts, chief executive officer, CPRIT, testified that CPRIT has increased its transparency and oversight since the 83rd Legislature.

The 84th Legislature may consider additional ways to increase transparency and accountability at CPRIT.

### **Compounding Pharmacies**

Compounding pharmacies make drugs prescribed by doctors for specific patients with needs that cannot be met by commercially available drugs. Compounded medications are made from scratch, and pharmacies mix individual ingredients together in the exact strength and dosage form required by the patient.

Compounding became a major concern to lawmakers when a Massachusetts compounding pharmacy's contaminated medication caused a meningitis outbreak. The contaminated medication killed 48 people and required 720 individuals to be treated for persistent fungal infections.

The United States Food and Drug Administration (FDA) traditionally regulates drug manufacturers, but pharmacies are typically regulated by states.

After concerns about compounded drugs escalated, the Texas State Board of Pharmacy (TSBP) began randomly sampling compounded drugs.

In 2012, a compounding pharmacy in Dallas and its owner pleaded guilty in federal court to two misdemeanors for shipping a misbranded drug that led to the deaths of three people in the Pacific Northwest.

The 84th Legislature may consider legislation regarding the regulation of compounding pharmacies.

### **Electronic Cigarettes**

Electronic cigarettes are battery-powered vaporizers that provide the user with the sensation of smoking tobacco. A liquid, usually containing a mixture of propylene glycol, glycerin, nicotine, and additional flavoring, is vaporized and produces a mist but no smoke. Some types of electronic cigarettes do not contain nicotine. Electronic cigarettes are often considered as an aid for smoking cessation and replacement.

A 2014 World Health Organization report found that there was not enough evidence to determine if electronic cigarettes can help people quit smoking. Some critics of electronic cigarettes claim that they may promote delaying or deterring smoking cessation. Organizations such as the American Lung Association and the United States Food and Drug Administration argue that not enough is known about the possible harmful effects of using electronic cigarettes. Concerns have also been expressed concerning the second-hand nicotine exposure produced by electronic cigarettes.

As electronic cigarettes have become increasingly popular, state and local governments have taken action to regulate the sale and use of electronic cigarettes. More than 40 states currently prohibit sales of electronic cigarettes to minors.

Texas law prohibits the sale of tobacco substitute products to minors, but electronic cigarettes are not considered a tobacco substitute under Texas law. Several Texas municipalities have banned the use of electronic cigarettes in smoke-free venues, including San Marcos, Harlingen, Frisco, and Wichita Falls.

The 84th Legislature may consider legislation defining electronic cigarettes as tobacco substitutes in order to prohibit sales of the products to minors. The 84th Legislature may consider legislation further regulating the sales and use of electronic cigarettes.

### **Medicaid Fraud**

Medicaid in Texas is overseen by the Health and Human Services Commission (HHSC). In fiscal year 2013, there were more than 4.4 million Texas Medicaid recipients and fewer than 78,000 Medicaid providers. According to the Texas Medical Association, the percentage of Texas physicians accepting Medicaid declined to 31 percent in 2012—an all-time low.

Fraud in the Medicaid system has been a concern of Texas lawmakers for years.

The Medicaid Fraud Control Unit of the Texas Attorney General's Office conducts criminal investigations of Medicaid providers who are suspected of cheating the Medicaid program and investigates allegations of physical abuse and neglect in healthcare facilities that receive Medicaid funding. The unit does not investigate possible fraud committed by Medicaid recipients.

The Office of Inspector General (OIG), a division of HHSC, works to prevent, detect, and pursue fraud, waste, and abuse in the healthcare system in Texas. OIG investigates allegations of fraud, waste, and abuse committed by program recipients, health and human services agency employees, and Medicaid providers. OIG also investigates criminal incidents at state supported living centers and fraud or misuse of vital statistics records. OIG also issues sanctions and performs administrative actions against providers and recipients.

In response to concerns relating to Medicaid fraud investigations conducted by OIG, the 83rd Legislature passed S.B. 1803 to ensure that Medicaid providers who were put on payment holds were given due process rights and that cases were resolved in a timely manner.

In October 2014, the Sunset Advisory Commission released its staff report on HHSC. The report found that OIG takes an average of more than three years to resolve cases of alleged fraud. The report also found that in fiscal years 2012 and 2013, OIG investigators identified more than \$1.1 billion potentially overbilled by Medicaid providers but collected only \$5.5 million. In response to the report, Kyle Janek, executive commissioner, HHSC, appointed a special assistant to review Texas' Medicaid anti-fraud program.

The 84th Legislature may consider legislation that would improve the state's ability to investigate potential Medicaid fraud or increase oversight of the agencies that conduct Medicaid fraud investigations.

### **Mental Health**

According to the Texas Department of State Health Services (DSHS), there are approximately 499,000 Texans suffering from severe and persistent mental illness and 175,000 Texas children suffering from severe emotional disturbance. Only 30 percent of adults and 27 percent of children are currently being served by DSHS.

The 83rd Legislature invested \$300 million in mental health services. A portion of the investment was spent to reduce the number of Texans on waiting lists for mental health services. According to DSHS, as of May 2014, there were only 285 adults and no

children on the waiting list for services, down from 5,321 adults and 194 children on the waiting list in February 2013. Some of the investment was spent to address the needs of Texans who were underserved due to resource limitations. According to DSHS, as of March 2014, 1,435 adults had been moved into the appropriate level of care. Funding also went to improve other mental health programs in the state.

The 83rd Legislature's investment in mental health services was substantial. At a hearing before the Senate Committee on Health and Human Services on August 15, 2014, David Lakey, commissioner, DSHS, testified that the investment is making a difference in the state's ability to provide mental health services but that there are still gaps in the system and areas that can be improved, including the inpatient care system. Lakey also testified that Texas' mental health hospital system is outdated and that facilities are not located in areas of great need. He also said that there continue to be gaps in crisis services and prevention.

At the August 15, 2014, hearing before the Senate Committee on Health and Human Services, several committee members expressed concern about public awareness concerning the mental health services available to Texans. Senator Nelson recommended that the state introduce a website that could act as the single source for information about mental health services.

The 84th Legislature may consider legislation that would further improve the mental health services provided by the state.

### **Prescription Drug Abuse**

Prescription drug abuse remains a serious problem in Texas. Deaths from prescription drug overdoses in Texas among women between the ages of 20 and 44 increased more than 340 percent between 2000 and 2010. The drug overdose mortality rate in Texas was 9.6 per 100,000 in 2013, an increase from 5.1 per 100,000 in 2002. Nonmedical prescription drug use has increased in vulnerable populations, especially opioid-dependent pregnant women.

### **Neonatal Abstinence Syndrome**

Neonatal abstinence syndrome (NAS) refers to problems that occur in a newborn who was exposed to drugs in utero. NAS may occur when a pregnant woman takes opiates or narcotic drugs, such as heroin, codeine, oxycodone, methadone, or buprenorphine. NAS develops in 55 to 94 percent of drug-exposed infants. NAS symptoms range from mild to severe and include sneezing, diarrhea, tremors, and seizures. Hospitalization is required for administration of medications, but symptoms can be managed at home when they become less severe. NAS can last from one week to six months. There are significant

costs associated with treating NAS.

Drug and alcohol use during pregnancy can lead to health problems in addition to NAS, including birth defects, low birth weight, premature birth, small head circumference, and problems with development and behavior.

The incidence of NAS has tripled in the United States over the past decade, largely due to prescription drug abuse. Nationally, about one child is born with NAS every hour. Data suggests that the number of NAS cases in Texas is rising. Bexar, Dallas, and Harris Counties have the highest incidence of NAS. NAS cases in Bexar County account for more than 30 percent of all NAS cases in the state.

Strategies for treatment of drug-dependent pregnant women include immediate induction to opioid substitution therapy, management of behavioral health, management of medical and obstetric issues, and intensification of recovery support services.

Currently, pregnant women are given priority admission to treatment services that are funded by the Department of State Health Services (DSHS) through state and federal funds. The Health and Human Services Commission (HHSC) also funds treatment services through Medicaid, but there is not a requirement to prioritize admissions for pregnant women due to the nature of the funding structure.

The "Mommies Program," a pilot program initiated in San Antonio in 2007, integrates high quality pre-natal care with opioid maintenance treatment. The program includes a strong clinical focus on peer and family support services and trauma mitigation. The program has decreased the Department of Family and Protective Services (DFPS) removal rate and improved health outcomes in both newborns and mothers.

Lauren Lacefield Lewis, assistant commissioner for mental health and substance abuse services, DSHS, declared NAS to be a priority for the agency at a hearing before the Senate Committee on Health and Human Services on August 15, 2014. Senator Schwertner declared an interest in moving forward with legislation addressing NAS during the 84th Legislative Session.

The 84th Legislature may consider legislation making NAS a "notifiable condition," which would require reporting to DSHS on the substance the mother was using that caused the NAS. This would allow for more active surveillance of NAS and timelier implementation of interventions and has been recommended by the Association of State and Territorial Health Officials (ASTHO). Currently, Texas has access only to hospital discharge data and Medicaid billing data, neither of which provide sufficient detail on the underlying substance.

The 84th Legislature may consider legislation expanding the "Mommies Program" pilot program beyond San Antonio.

### Prescription Monitoring Programs

The Texas Prescription Program (TPP) collects prescription data on all Schedule II, III, IV, and V controlled substances dispensed by a pharmacy in Texas or to a Texas patient from a pharmacy in another state. TPP is used by practitioners and pharmacists to verify their own records and inquire about patients. TPP is also used to generate and disseminate information regarding prescription trends. TPP is currently administered by the Texas Department of Public Safety (DPS).

The Texas State Board of Pharmacy (TSBP) has expressed interest in administering the TPP.

The National Association of Boards of Pharmacy (NABP) Prescription Monitoring Program (PMP) InterConnect facilitates the transfer of PMP data across state lines to authorized users. It allows participating state PMPs to be linked, which may provide a more effective means of combating drug diversion and drug abuse nationwide. The program is free to participating states, and 25 states have already joined the NABP PMP InterConnect. Texas is not currently a member of the program.

When testifying before the Senate Committee on Health and Human Services on August 15, 2014, Mari Robinson, executive director, Texas Medical Board (TMB), stated that if Texas were to join the NABP PMP InterConnect, TMB would have a more complete picture of prescription drug sales in the state. She recommended that TPP data be fully integrated into the health information exchange (HIE) so that emergency room physicians have data about a patient's prescriptions immediately upon that patient's arrival at the emergency room.

The 84th Legislature may consider legislation addressing the suggestions from TSBP and TMB, including legislation allowing Texas to join the NABP PMP InterConnect and allowing TSBP to administer the TPP.

### Take-Back Programs

Take-back programs promote the safe disposal of unused prescription and over-the-counter medications. Take-back programs include take back days, where individuals are encouraged to dispose of unused prescription medications anonymously at specified collection sites, and take-back receptacles, which are permanent receptacles at law enforcement facilities where individuals may dispose of unused medications anonymously.

Take-back programs are supported by law enforcement, public health authorities, and environmental professionals.

The 84th Legislature may consider legislation to increase take-back opportunities in the state.

### **Public Health and Infectious Disease Prevention and Response**

In October 2014, Texas became the first state to experience a diagnosis of Ebola within its borders. The response to the initial diagnosis and the subsequent contraction of the disease by two nurses has led to considerable criticism and concern about Texas' ability to prevent and respond to the spread of infectious diseases.

Thomas Eric Duncan, the first person diagnosed with Ebola in the United States, sought medical care at Texas Health Presbyterian in Dallas on September 25, 2014, after a trip to Liberia, but was sent home. After his condition worsened, Duncan was taken to the hospital by ambulance on September 28 and diagnosed with Ebola two days later. Duncan died on October 8, 2014.

On October 12, Nina Pham, a nurse who had cared for Duncan, tested positive for Ebola. She was later taken to the National Institutes of Health in Maryland for treatment and was discharged on October 24. A second nurse who treated Duncan, Amber Vinson, was later diagnosed with Ebola and taken to Emory University Hospital for treatment and was released on October 28, 2014.

Governor Perry created the Texas Task Force on Infectious Disease Preparedness and Response on October 6, 2014. The task force was expected to provide recommendations for consideration by the legislature by December 1, 2014.

At a hearing before the Senate Committee on Health and Human Services on October 7, 2014, before the death of Duncan and the diagnoses of Pham and Vinson, Kyle Janek, executive commissioner, Health and Human Services Commission (HHSC), testified that Texans should feel confident in the state's ability to respond to and prevent the spread of infectious diseases. A number of committee members expressed concern about the preparedness of Texas hospitals and agencies to respond to infectious disease outbreaks. Senator Schwertner noted that the Texas Sunset Advisory Commission's report on the Texas Department of State Health Services concluded that Texas' decentralized approach to delivering public health services while providing for local control and flexibility has presented challenges in coordinating public health efforts.

The 84th Legislature may consider legislation that would improve the chain of command and collaboration coordination in public health efforts and any legislation that would improve the state's ability to prevent and respond to infectious disease outbreaks.

### **Regulation of Dentistry**

Corporate dentistry refers to any of a variety of practice modalities in which management services are provided in a manner that is organizationally distinct from the scope of activities performed by a dentist within only his or her practice. Depending on the model used, dental management companies, dental service organizations (DSO), management service organizations, or dental management service organizations (DMSO) provide or administer management services.

The corporate practice of dentistry raises concerns that permitting businesses to own and administer a dental practice and employ dentists threatens a dentist's bond with patients and raises concerns that care will be motivated by profit rather than purely medical decision-making.

The Texas State Board of Dental Examiners (TSBDE) is responsible for regulating the practice of dentistry in the state.

H.B. 3201, 83rd Legislature, Regular Session, 2013, requires TSBDE to collect information aimed at determining dental practices that may have entered into dental service agreements with dental service organizations.

TSBDE may send a cease and desist order to a non-dentist if TSBDE determines that individual to be practicing dentistry, but TSBDE has no authority to regulate non-dentists involved in the corporate practice of dentistry. TSBDE regulations hold dentists responsible for the actions of non-dentists with whom they are associated.

At a hearing on August 14, 2014, members of the Senate Committee on Health and Human Services expressed concern that TSBDE cannot regulate non-dentists involved in the corporate practice of dentistry. Julie Hildebrand, executive director, TSBDE, testified that TSBDE cannot regulate the corporate practice of dentistry beyond a cease and desist order without legislative action.

The 84th Legislature may consider legislation providing the Texas State Board of Dental Examiners the authority to regulate non-dentists involved in the corporate practice of dentistry.



### **Texas Temporary Assistance for Needy Families**

Temporary Assistance for Needy Families (TANF) provides financial and medical assistance to needy dependent children and the parents or relatives with whom they are living. Eligible TANF households receive monthly payments for six months, after which benefits may be renewed. Families who receive TANF benefits may also apply for Medicaid benefits. TANF payments are provided through the Lone Star Card—an electronic debit card.

To be eligible for TANF benefits, families must meet financial and non-financial requirements. In general, families must include a child (or a pregnant woman) and their countable assets must be \$2,000 or less. Adults in families receiving cash benefits must work or participate in work-related activities for a specified number of hours per week depending on the number of work-eligible adults in the family and the age of the children.

"Child-only families," where the child lives with a relative and the needs of the relative are not included in the calculation of the benefit, are not subject to the work requirement. Adults who are not included in the calculation of the TANF benefit because they receive Supplemental Security Income (SSI) benefits or because they are ineligible non-citizens are not subject to the work requirement.

Other requirements of eligibility for TANF cash assistance include complying with a Personal Responsibility Agreement (PRA). The PRA requires recipients to participate in the Choices work program unless exempt, cooperate with child support requirements, not quit a job, not abuse drugs or alcohol, attend parenting classes if referred, obtain medical screenings for their children, and ensure that their children are immunized and attending school. Households that do not comply with the PRA are sanctioned.

State law directs TANF recipients to use TANF to purchase goods and services necessary and essential to the welfare of the family, such as food, clothing, housing, utilities, transportation, and medical supplies. Retailers authorized to accept TANF may not receive more than 10 percent of revenue from entertainment. According to Kyle Janek, executive commissioner, Health and Human Services Commission (HHSC), Texas has one of the most restrictive TANF programs in the United States.

Texas' TANF caseload has decreased significantly in recent years, from 750,000 recipients in fiscal year (FY) 1995 to fewer than 80,500 in FY 2014.

### Drug Testing of TANF Recipients

Concern that the states could be subsidizing drug dependencies through public dollars has led many states to consider legislation requiring drug testing of TANF recipients.

Federal courts in Michigan and Florida have struck down suspicion-less drug testing of TANF recipients. Nine states have passed legislation requiring TANF recipients to be screened or tested for drug use. Arizona is an example of a state that screens new TANF recipients by asking them to self-report drug use. Oklahoma and Utah screen new TANF recipients through a long questionnaire that is then interpreted. There are concerns that these approaches to drug screening and testing are not cost effective or successful at identifying drug use among TANF recipients.

The 84th Legislature may consider legislation requiring screening or drug testing of TANF recipients.

### State Exemptions From Work Requirement for TANF Recipients

TANF recipients are required to obtain a referral to a workforce solution office from the Texas Workforce Commission (TWC). At the workforce solution office, TANF recipients attend workforce orientation for application (WOA), which emphasize self-sufficiency. After completion of WOA, HHSC certifies TANF eligibility for those individuals. Certified recipients are then called to an employment planning session to receive help developing an employment plan. Recipients also receive help with job search and resume writing. TANF recipients also receive career counseling, subsidized childcare, and transportation. If TANF recipients fail to comply with these requirements, TWC files a sanction request with HHSC.

According to Reagan Miller, division director, Workforce Development Division, TWC, 53 percent of adult TANF recipients referred to TWC in July 2014 were exempt from work requirements and 51 percent were exempt in fiscal year 2013. Exemptions to TANF work requirements include: children under the age of 19; adults over the age of 60; single parents or relatives caring for a child under the age of one; adults needed at home to provide for an ill or disabled household member; adults who are temporarily or permanently disabled; adults who are pregnant and unable to work; single grandparents over the age of 50 who are caring for a child under the age of three; and "good cause," because the adult is not able to meet work requirements. The good cause exception is specific and limited.

Several members of the Senate Committee on Health and Human Services expressed concern about the number of exemptions from and the percentage of TANF recipients exempt from the work requirement.

The 84th Legislature may consider legislation that would decrease the number of exemptions from the work requirement for TANF recipients.

### **Women's Health**

Texas has a number of state programs that provide health care to women.

The Texas Women's Health Program (TWHP), which is administered by the Texas Health and Human Services Commission (HHSC), provides low-income women with one family planning examination each year; family planning, counseling, and education; treatment of certain sexually transmitted infections; and birth control.

The Texas Department of State Health Services (DSHS) Family Planning Program provides birth control, pregnancy testing, health screenings, planning for healthy pregnancies, testing for sexually transmitted infections, health education and counseling, pelvic exam, Pap tests, and breast cancer screenings to women who qualify.

The DSHS Expanded Primary Health Care (EPHC) Program provides primary, preventive, and screening services to women who qualify. The services are made available at participating clinic sites throughout the state.

The DSHS Healthy Texas Babies initiative was developed to help Texas communities decrease the incidence of infant mortality.

The DSHS Breast and Cervical Cancer Services program helps fund clinic sites across the state to provide quality, low-cost, and accessible breast and cervical cancer screening and diagnostic services to women who qualify. Services available through the program include examinations, mammograms, pelvic exams, Pap tests, case management, education, diagnostic services, certain other treatments, and help with applying for Medicaid for Breast and Cervical Cancer (MBCC).

There are also services available to qualifying women through Title V.

In a hearing before the Senate Committee on Health and Human Services on August 14, 2014, Kyle Janek, executive commissioner, HHSC, testified that the number of disparate programs for women's health care has posed a challenge and may create confusion for women seeking services or providers. He suggested that streamlining the services might be beneficial in helping to inform women about the services available to them in the state.

Senator Nelson expressed concern about the confusion surrounding the number of programs providing health care to women and suggested that the Senate Committee on Finance might be able to assist in the consolidation of some of the programs.

The 84th Legislature may consider legislation that would streamline women's health programs or that would increase public understanding of the health programs available women.



## **INTERGOVERNMENTAL RELATIONS**

### **Affordable Housing Programs**

Affordable housing programs in Texas focus on providing housing for individuals and families who cannot afford a house through conventional financial structures. Created in 1994, the Texas State Affordable Housing Corporation (TSAHC) targets the housing needs of low-income families and other underserved individuals. TSAHC helps people achieve homeownership by leveraging private donations and TSAHC's authority to sell tax-exempt affordable housing bonds to fund housing programs while also utilizing program-related investments from foundations and financial institutions to help developers create affordable housing.

At the federal level, the Section 8 Housing Choice Voucher Program provides rental assistance payments on behalf of low-income individuals and families. Low-income households, disabled persons, and homeless individuals who qualify for the program pay no more than 30 percent of their income for rent while the voucher provides for the remainder. The Section 8 program, however, has had a dwindling impact across Texas. In 2014, Texas cities received 142,857 Section 8 vouchers, a number that only accounts for around seven percent of the national total. In Austin, less than one-half of one percent of the population receives assistance from the Section 8 program. In Houston, approximately 18,000 of the 80,000 who apply for vouchers receive them, with other applicants being deferred to waiting lists.

The 84th Legislature may consider legislation to enable more people to achieve homeownership and lower the number of people on waiting lists for housing assistance.

### **Bond Issuance**

In order to address issues associated with rapid population growth, many local communities have been forced to consider alternative funding streams. One financial option that some local governments are beginning to consider is capital appreciation bonds. While traditional bonds require the borrower to pay off the principal and interest in installments over the term of the bond, capital appreciation bonds do not require installment payments. A borrowing entity must, however, pay the entire principal plus interest when the bond reaches maturity in 30 or 40 years. The avoidance of installment payments comes at the cost of higher accrued interest, potentially as much as 10 times the amount borrowed compared with a traditional bond, according to public finance officials.

Capital appreciation bonds have been used by school districts throughout the state, particularly by "fast-growth" school districts, to navigate around state limits on debt. The Leander Independent School District, which had 7,200 students in 1994 before growing to 36,750 in 2014, issued capital appreciation bonds to construct facilities for the massive numbers of students moving to the district.

Proponents note that because capital appreciation bonds do not require payment for years or decades, communities and school districts are able to quickly address issues in their region. Opponents argue that they cost borrowers far more in the long term and future taxpayers will be faced with such costs. Officials have said that the use of capital appreciation bonds can be beneficial for certain projects, such as transportation or refinancing programs, but that applying them to other projects will create significant financing issues in the future.

The 84th Legislature may consider the use of capital appreciation bonds and other financing methods for local government needs.

### **Chief Innovation Officers**

A chief innovation officer serves as a liaison between businesses, communities, universities, and other entities to find solutions to problems. Due to shrinking budgets and the demand for transparency, local governments have been considering the use of professionals to encourage new and innovative problem-solving. Several states and municipalities, including Austin, employ a chief innovation officer. The position focuses on ever-changing challenges and developments and technology, which means that the officer's exact role must be flexible.

Opponents of the use of chief innovation officers state that the position does not bring about rapid and significant change and may drain time and resources. Proponents state that an individual who is charged with focusing on future enhancements for a city can solve certain issues relating to transportation, funding for projects, or other issues that may present themselves.

The 84th Legislature may enact legislation regarding the use of chief innovation officers.

### **Public Information**

Two laws have been enacted that make many government documents available to citizens. The Texas Public Information Act (TPIA) requires state and local governments to make certain information public while the federal Freedom of Information Act requires the same of the federal government. TPIA allows individuals to request documents and

information from school districts, cities, and state agencies. While some safeguards are in place, such as allowing a student's information to be released only to the student's parent or guardian and creating an exception for police to withhold information about an ongoing investigation, the public is often allowed whatever data they are seeking.

Currently, private entities may perform public functions traditionally performed by government, such as running prisons or providing highway maintenance. One issue concerns the application of TPIA to information held by such private entities under contracts with governmental bodies, as illustrated by legal challenges brought by the Greater Houston Partnership (GHP). GHP is a nonprofit corporation promoting economic stability and growth in the Houston area that entered into a contract with the City of Houston to provide economic development and trade services. After receiving a TPIA request for all checks it issued in 2007, GHP sought an opinion from the Office of the Attorney General (OAG) regarding whether GHP was a governmental body and therefore subject to TPIA. OAG's Open Records Division issued a letter ruling in February of 2008, finding that GHP was a governmental body and therefore subject to TPIA. The OAG applied what is known as the *Kneeland* test, from the United States Fifth Circuit Court of Appeals ruling in *Kneeland v. National Collegiate Athletic Association*, which held that, under certain circumstances, an entity receiving public funds is treated as a governmental body under TPIA.

GHP filed an action seeking a declaratory judgment that GHP was not a governmental body, that OAG had no jurisdiction over GHP, and that the letter opinion was incorrect and without force. The district court found that because GHP received public funds from Houston to provide economic and promotion services, this created an agency-type relationship between the two entities and therefore GHP was a governmental body under *Kneeland*. GHP appealed, and in January 2013, the Third Court of Appeals upheld the lower court. On October 3, 2014, the Texas Supreme Court denied GHP's petition to review the case.

Proponents of expanding TPIA to private entities with government contracts argue that when government functions are outsourced to private entities, the public must have a right to review relevant information held by such private entity to ensure that the contract is being properly administered and public funds are not being mismanaged. Opponents assert that expanding TPIA to private entities that contract with governmental bodies could result in private companies having to spend significant time and resources responding to open records requests, including intrusive or frivolous requests by competing businesses, and could put trade secrets or proprietary information at risk.

The 84th Legislature may consider legislation regarding the types of entities that are affected by open records laws and the information that they are legally obligated to provide.

### **Texas County Governments**

County governments provide the underlying infrastructure that allows Texas to operate in an efficient manner. Serving as a functional arm of state government, counties impact numerous aspects of life, including public safety, regional transportation, court systems, and record-keeping for deeds and public documents.

The powers and duties of county government are limited to those specifically provided by the Texas Constitution, but officials note that the state government can find it difficult to keep track of ordinances enacted by local units of government. At the same time, state policies regarding taxes or cutting state government costs can lead to issues that local governments are forced to address. Concerns have been raised that communication between the state and local governments is not as robust as it could be.

The 84th Legislature may consider legislation to improve communication between state and county governments.

### **Toll Roads**

There are approximately 25 toll roads within Texas. These roads allow citizens to travel at a high speed while also easing traffic flow on other roadways around the state. However, opinions have been divided over their use since the very first ones were established. A Texas Transportation Institute study in 2014 found that constructing more toll roads was the least popular option among 15 potential ways to improve transportation in the state.

The 83rd Legislature approved S.J.R. 1, which appeared on the November 2014 ballot as Proposition 1. With its approval by the voters, Proposition 1 is expected to redirect billions of dollars over the next decade from Texas' Rainy Day Fund to the State Highway Fund. However, transportation officials caution that even those additional dollars will not be sufficient to address all of Texas' transportation infrastructure needs and toll roads will continue to be an important option.

Proponents of toll roads state that they will be built only when they are the best way to address transportation needs and that building tollways will allow drivers to pick from several different routes, thus easing traffic in other areas. Opponents, however, note that toll roads are established when elected officials are not willing to fix major transportation funding problems. Opponents also say that toll roads may fail to attract their projected volume of usage as drivers opt for other roads in order to avoid paying tolls.

## ISSUES FACING THE 84<sup>th</sup> TEXAS LEGISLATURE

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The 84th Legislature may consider continuing or expanding the use of toll roads as one method for addressing the state's transportation needs.



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**JURISPRUDENCE**

**Electronic Filing of Court Documents**

In 2012, the Texas Supreme Court mandated the implementation of statewide electronic filing (known as e-filing) in the Texas civil court system. H.B. 2302, enacted by the 83rd Legislature, Regular Session, 2013, authorizes local governments using an e-filing system to collect \$2 for each electronic transaction in order to recoup costs associated with the statewide implementation of e-filing. In addition, H.B. 2302 imposes filing fees on the filing of civil actions or proceedings in the civil courts and imposes a \$5 court cost on certain criminal convictions. These revenues are to be paid into the statewide electronic filing system fund, under the control of the Office of Court Administration of the Texas Judicial System, and used to support court electronic filing technology projects. H.B. 2302 also provides for a per-case filing fee for civil cases, replacing the current system requiring filing fees for each document filed in a case, making it less expensive to file and pursue litigation.

As of June 2014, e-filing has been implemented in 59 counties, as well as by the Supreme Court, the Court of Criminal Appeals, and all civil appellate courts. The benefits of e-filing include convenience to parties, ease of access to court records, public access to court information, eliminating paper storage expenses, and streamlining the appellate process.

Because of the size of the state's judicial system and the differences in technology and practices across the state, full implementation of e-filing is a tremendous undertaking. There is no unified case management system for the courts and each county selects its own system. For example, some counties have systems that allow for two-way electronic communication, meaning that all case information is searchable, but in other systems, while documents can be filed electronically, they are not searchable. The implementation of e-filing has underscored the need to standardize court filings throughout the state. It is anticipated that as implementation moves into smaller and rural counties, there will be new issues, such as limited access to the Internet and the lack of resources to purchase and maintain the necessary computer technology. The Texas Supreme Court will continue to monitor the implementation of e-filing and adjust the rules and administration as necessary.

The optional \$2 fee under H.B. 2302 must be approved by the county commissioners court. As of June 2014, 44 counties are currently charging this fee. Some note that considering the projected costs of implementing e-filing, counties implementing the fee will need time to recoup their costs. Some larger counties have decided to forgo the fee because they have determined that e-filing will provide sufficient cost savings or because

the cost and tracking of the \$2 fee is too expensive and time consuming. For smaller jurisdictions, the low number of filings limits their ability to raise revenue. Another issue is that the \$2 fee is set to expire September 1, 2019, and some have suggested that this may not be enough time for some counties to recoup all the costs of implementing e-filing.

Other issues facing the courts implementing e-filing are the inconsistency in e-filing procedures being implemented across the state and lack of clarification regarding when documents are considered filed under an electronic system. Some note that litigation is deadline driven and suggest clarifying that the statute of limitations or filing deadlines are not tolled when there is a technical glitch or human error in e-filing. Other recommendations include requiring e-file systems to provide an option to notify or copy an attorney's assistant and/or paralegal, implementing online training in e-filing to clerks and court personnel, and providing technical assistance from the state for smaller counties.

The 84th Legislature may consider legislation related to e-filing.

### **Waiving the Right to Nondisclosure of Criminal Records**

Section 411.081 (Application of Subchapter), Government Code, authorizes certain persons who were placed on deferred adjudication community supervision and received a discharge and dismissal to seek an order of nondisclosure prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense. Depending on the offense, a person may have to wait as long as the fifth anniversary of the discharge and dismissal before being eligible to seek a nondisclosure order. There is anecdotal evidence that in some counties prosecutors may require a defendant to waive his or her right to seek an order of nondisclosure as a condition of receiving deferred adjudication in a plea agreement.

Proponents of this practice state that nondisclosure is just one factor that can be negotiated in the plea bargain process and assert that prosecutors need as many options as possible in order to resolve cases. They argue that in certain cases, the prosecutor may want the defendant's record to remain public or may offer deferred adjudication in exchange for a waiver rather than seek a more serious sentence. Proponents assert that defendants have the option of going to trial and seeking acquittal and that a defendant does not have an absolute right to nondisclosure. They warn that if the legislature statutorily bars waivers of nondisclosure, it is possible that fewer defendants will be offered the option of deferred adjudication.

Opponents of the practice assert that the reason for nondisclosure is to give an individual a chance at rehabilitation. They note that having a criminal record can prevent a person

from obtaining employment, housing, or education, and may make that person ineligible for certain occupational licenses or governmental benefits. Opponents argue that many defendants, and even many attorneys, may be unaware of the future ramifications of waiving this right. They also note that economically disadvantaged defendants may accept a plea bargain and deferred adjudication because they cannot afford bail and do not want to spend weeks or months in jail waiting for trial. They note that the legislature has exempted many serious offenses from eligibility for deferred adjudication.

The 84th Legislature may consider legislation related to waiver of a defendant's right to seek an order of nondisclosure.

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**NATURAL RESOURCES**

**Air**

Clean Power Plan

On June 2, 2014, the Environmental Protection Agency (EPA) proposed the Clean Power Plan (plan) to cut carbon pollution. The proposal was in response to President Obama's Climate Action Plan and is designed to decrease the amount of carbon emissions from power plants. According to the EPA, there are currently no national limits on carbon pollution.

The plan as proposed aims to:

- cut carbon pollution by 30 percent compared to 2005 levels;
- cut pollution that leads to soot and smog by more than 25 percent by 2030;
- make existing coal plants more efficient;
- switch plants from coal to natural gas;
- add more renewable energy sources; and
- increase energy efficiency measures to reduce electricity consumption.

According to the EPA, the plan will lead to climate and health benefits worth an estimated \$55 billion to \$93 billion in 2030, including avoiding 2,700 to 6,600 premature deaths and 140,000 to 150,000 asthma attacks in children. The EPA has stated that it believes that the plan is flexible and reflects the needs of each state.

The *Texas Tribune* conducted an analysis that found that if the plan were to go into effect, Texas would need to reduce carbon emissions from its power plants by as much as 195 billion pounds in the next 18 years. The reduction in carbon emissions that are expected by 2030, if the state were to be in compliance, would have to be about 43 percent compared to the state's 2013 emissions.

In a September 2014 hearing of the House Environmental Regulation Committee, Brian Lloyd, executive director, Public Utility Commission of Texas, stated that the regulations do not reflect the reality of the state's electric markets and that the plan requires expensive capital costs to implement. Vincent Meiller, senior technical specialist, Texas Commission on Environmental Quality, questioned the plan's flexibility and stated that the data used for the EPA's southwest region goals is skewed.

Texas has until June 2015 to create its strategy for how the state will comply with the EPA's plan.

Opponents of the changes say that the new standards would harm energy providers, the people those companies employ, and the economy, and that the standards would decrease the amount of power generated in the state.

Proponents say that the changes would help fight climate change and improve public health. Proponents also say that the state is already close to meeting the 2030 goals and that price increases for electricity would be minimal.

The 84th Legislature may consider legislation to study how to best respond to the EPA's Clean Power Plan.

### **Water**

#### Drought

In August 2011, Texas State Climatologist John Nielsen-Gammon declared that Texas was experiencing the most severe drought in history. Nielsen-Gammon stated that higher-than average temperatures, combined with unusually light rainfall, contributed to the severity of the drought.

In February 2012, the United States Drought Monitor showed that 37 percent of the state was in extreme or exceptional drought conditions, including all or part of 124 counties. In September of 2012, Nielsen-Gammon stated that much of Texas is so deep in drought that several months of above-normal rain may not be enough to end it. A September 2014 report stated that conditions in Texas have marginally improved, with 52 percent of topsoil and 63 percent of subsoil rated "short to very short of moisture" and 34 percent of pastures and rangeland in "poor to very poor condition." Drought brings with it increased chance of wildfires, which the state experienced in 2011, and a lack of water for agriculture, ranching, and municipal use, which increases costs to customers.

The population of Texas is expected to reach more than 46 million people by the year 2060. Experts have projected that, by that time, if a drought were to occur, almost 22 million acre-feet of water per year would be needed to meet water demands. If no water management strategies were put in place with such a large population, 15 million acre-feet would be available to meet those demands. *Water for Texas: Summary of the 2011 Regional Water Plans*, written by the Texas Water Development Board (TWDB), stated that "the true discrepancy between demand and supply is even greater than the difference between these figures indicates, as surplus existing water supplies in some areas are not necessarily available to meet demands in other areas."

On January, 30, 2012, the town of Spicewood Beach, located in the Hill Country, became the first Texas town to run dry during the drought. Spicewood Beach receives its water from the Lower Colorado River Authority (LCRA). The town, which had previously been trucking water to other municipalities, began having water trucked in after its supply ran dry. In January 2013, LCRA approved the construction of a Spicewood Beach Water Treatment Plant that would draw water from the surface of Lake Travis instead of from groundwater. The plant is currently close to completion.

According to the Texas Commission on Environmental Quality (TCEQ), during the week of September 24, 2014, seven public water systems were in an emergency priority category and were in danger of running out of water in 45 days or less. That same week, 23 public water systems were in danger of running out of water in 90 days or less.

The economy of the Gulf Coast region of the state depends on rice farming and other agricultural operations. Irrigation farming has been used in the lower Colorado River basin for more than 100 years; coastal rice farmers used water for their crops from the Colorado River beginning in the 19th century. Today, LCRA operates 11 pumping plants that supply water through a 1,100-mile network of irrigation canals in portions of Matagorda, Wharton, and Colorado Counties.

In the spring of 2012, for the first time in its history, the LCRA did not release water to rice farmers in three counties in Texas. LCRA stated that the reason was because rice farmers pay less for water than other sectors of industry, including cities, and therefore their water service is considered "interruptible" during times of severe drought. According to an April 2012 report from LCRA, rice farmers used 367,985 acre-feet of water from the Highland Lakes, which are managed by LCRA. The affected rice farmers in the area maintained that the use of water for farming surpasses the importance of the use of water for golf courses or other recreational purposes.

LCRA's board proposed changes to its Water Management Plan (plan) that would release more water to rice farmers and increase flows to Matagorda Bay. The approval for the plan is the responsibility of TCEQ, which has not made a final decision.

Recently, LCRA was given a State Water Implementation Fund loan of \$250 million for the construction of a Wharton County reservoir. The project is expected to be completed in 2017.

Opponents of the changes to the plan and to the reservoir say that extra water should be released downstream instead of being used to raise the storage level of the Highland Lakes.

Proponents of the plan and reservoir say the measures will help agricultural, industrial, and municipal customers and will benefit the environment.

The 84th Legislature may consider legislation related to providing assistance to cities that are in danger of running out of water and to farmers that have been severely affected by drought.

### Groundwater

Aquifers are a critical source of groundwater for Texas. The Texas Water Development Board (TWDB) recognizes nine major aquifers and 21 minor aquifers that produce water for households, cities, industry, agriculture, and ranching. Aquifers supplied 59 percent of the 15.6 million acre-feet of water used by Texas in 2004. Of that amount, 80 percent was used for irrigation, 15 percent was used by municipalities, and five percent was used for manufacturing, oil drilling, ranching, and as steam for electricity generation. TWDB experts have stated that at current use levels, groundwater, especially in the Ogallala Aquifer, which is the largest aquifer in the United States and serves much of the High Plains region of Texas, and the Gulf Coast Aquifer, a major aquifer paralleling the Gulf of Mexico coastline, is diminishing. In 2007, TWDB projected that the amount of groundwater that could be used under its permits with existing pumping facilities would decrease by almost a third within 50 years.

Groundwater conservation districts (GCDs) are created by the legislature or by the Texas Commission on Environmental Quality through a local petition process. The Texas Water Code requires that GCDs consider groundwater availability models and other data for the management area during the development of the desired future conditions (DFC) for certain aquifers within groundwater management areas. Statute provides that GCDs are required to prepare reports that include a description of each DFC, provide policy and technical justifications for each DFC, and document the consideration of the various factors listed in the Texas Water Code. GCDs are the only entities in the state that are authorized to regulate the creation and spacing of water wells.

Questions have been raised regarding the amount of water that can safely and legally be pumped from aquifers.

In a September 2014 hearing of the Edwards Aquifer Oversight Committee, Roland Ruiz, general manager of the Edwards Aquifer Authority, stated that the Texas Supreme Court in *Edwards Aquifer Authority vs. Day*, which established that landowners own the groundwater beneath their property, did not give instruction regarding permitting. Ruiz stated that this raised a question regarding whether issuing permits for water would be a violation of the Fifth Amendment's Takings Clause, which prohibits private property from being taken for public use without just compensation.

A recent example of the complexity of groundwater management after the *Day* decision is highlighted in a September 2014 *Texas Tribune* article that discussed how two GCDs,

the Post Oak Savannah GCD and the Lost Pines GCD, are handling permits for the shared use of the Carrizo-Wilcox Aquifer differently.

The Post Oak GCD believes that groundwater is a private property right and that limiting pumping before it occurs could result in a lawsuit. The Lost Pines GCD issues permits in five-year increments and only for the amount of water that will be pumped during those five years.

Proponents of Post Oak GCD's approach say that not limiting pumping is essential for providing certainty that water will be available for decades. They maintain that providers need time to find customers to purchase the permitted water and to build infrastructure to transport the water.

Opponents say that long-term permits for large volumes of water from aquifers could cause the wells on private property to dry up. Opponents also say that GCDs should strictly monitor the amount of water pumped from an aquifer in order to avoid future water shortages statewide.

The 84th Legislature may consider legislation that would balance groundwater rights with the necessity for conservation.

### Coastal Barriers

The Federal Emergency Management Agency defines coastal barriers as land forms that provide protection for aquatic habitats and that serve as the mainland's defense against damage from storms and erosion.

In 1982, Congress passed the Coastal Barrier Resources Act (CBRA), which does not allow new federal financial assistance within a designated coastal barrier resources system. The intention behind CBRA was to encourage the development of coastal barriers and reduce the loss of human life, stop wasteful federal spending, and prevent damage to wildlife and other natural resources along the Atlantic and Gulf of Mexico coasts. Congress passed the Coastal Barrier Improvement Act (CBIA) in 1990, which was intended to triple the size of the system established by CBRA.

While some CBRA funds were used to create systems in Texas, experts agree that more must be done to protect its coast.

According to the United States Fish and Wildlife Services (USFWS), the types of coastal barrier landforms are as follows:

- Bay barriers—coastal barriers that connect two headlands and enclose a pond, marsh, or other aquatic habitat;



- Tombolos—sand or gravel beaches that connect one or more offshore islands to each other or to the mainland;
- Barrier spits—coastal barriers that extend into open water and are attached to the mainland at only one end. Barrier splits may develop into bay barriers if they grow completely across a bay or other aquatic habitat. Bay barriers can also become spits if an inlet is created;
- Barrier islands—coastal barriers that are completely detached from the mainland. Barrier spits may become barrier islands if their connection to the mainland is severed by creation of a permanent inlet. The barrier island represents a broad barrier beach, commonly sufficiently above high tide to have dunes, vegetated zones, and wetland areas;
- Dune or beach barriers—broad sandy barrier beaches with hills or ridges of sand formed by winds, which protect landward aquatic habitats; and
- Fringing mangroves—bands of mangrove along subtropical or tropical mainland shores in areas of low wave energy. Many of these areas are located behind coral reefs, which together with the mangroves themselves, provide significant protection for the mainland from storm impact.

The Ike Dike, created by Texas A&M University at Galveston, is a plan to create a coastal barrier system along Galveston Bay. The Ike Dike utilizes a gated coastal barrier and is modeled after technologies used in the Netherlands and New Orleans. According to the Ike Dike website, the project would extend protection from the existing Galveston Seawall along the remainder of Galveston Island and along the Bolivar Peninsula, with a 17-foot-high retaining wall that would be placed near the beach or would raise the coastal highways. Experts at the university say that the addition of flood gates at Bolivar Roads, at the entrance to the Houston, Texas City, and Galveston ship channels, and at San Luis Pass would complete a coastal spine that would provide a barrier against all gulf surges into the bay.

Other experts in the state, such as the Severe Storm Prediction, Education and Evacuation from Disasters (SSPEED) Center at Rice University and the Texas General Land Office, have also been studying how to best create a coastal barrier system in the Galveston Bay area.

During an August 2014 hearing of the Joint Interim Committee to Study a Coastal Barrier System, legislators agreed that a coastal barrier system must be designed and built before another natural disaster like Hurricane Ike hits the Houston area and encouraged experts to work together to develop a cohesive plan.

Proponents of creating a coastal barrier system say that a barrier system is an insurance policy, an economic development tool, and an investment in coastal areas. Proponents

agree that if a storm were to damage the Houston Ship Channel, the economic effect to the state and the nation would be devastating.

Opponents of a coastal barrier system say that while they agree that a barrier system should be developed, one should not hinder public beach access or negatively affect wildlife or endangered species along the coastline.

The 84th Legislature may consider legislation relating to the feasibility and desirability of creating and maintaining a coastal barrier system.

### Desalination

The Barnett Shale and the Eagle Ford Shale are two natural gas fields that span most of Texas and provide an abundance of the resource. The popularity of hydraulic water fracturing (fracking), which is the method most commonly used to extract natural gas from the earth, has significantly increased the amount of water needed for the practice. During the fracking process, water is used to cool and lubricate the drill bit. According to the Texas Water Development Board, the use of water for hydraulic fracturing operations is expected to increase significantly through 2020. Experts contend that there is no way to produce energy without water and there is no way to produce water without energy.

The state's population is projected to almost double, from 25 million to 46 million, over the next 50 years, and existing water supplies are expected to decrease as a result of the population increase. In a July 2014 hearing of the Joint Interim Committee to Study Water Desalination, Dr. Steven Lyons, an adjunct professor at Texas A&M University and an American Meteorological Society member, stated that because of meteorological changes, weather cannot be relied upon to accommodate the state's demand for water. He said that water that is not available meteorologically cannot be managed with methods such as cloud seeding or water catchment systems and suggested that the state encourage the development of desalination plants.

Desalination removes impurities from water and transforms wastewater into usable water. The most popular methods of desalination are multi-stage flash distillation, which uses heat to evaporate water, and reverse osmosis. The use of desalination technology on wastewater generated from the fracking process is being studied so that the treated water may be recycled and reused in the fracking process. Desalination of seawater is also being studied and experimented with in several coastal areas. Wichita Falls is currently working on a water reuse project that involves several treatments to the water before it is blended with water from Lake Wichita and treated again before being distributed.

There are more than 16,000 desalination plants around the world, and 40 percent of production from those plants comes from seawater desalination. Saudi Arabia is the largest producer of desalinated water. Texas does not currently have a seawater

desalination plant. Several brackish water desalination plants are in development in the state.

Cities are interested in desalination technology, but many leaders believe that the technology is too expensive to invest in without help from the state. County officials have said that there are industrial customers who have indicated that they are willing to pay a higher cost for a guaranteed supply of desalinated water.

Critics of desalination say that the technology is expensive and question whether the cost to desalinate water is worth the end product.

The waste from desalination of seawater and effluent water is also difficult to dispose of properly. Releasing too much brine into oceans from seawater desalination could negatively affect sea life and ecosystems. Likewise, those who are critical of desalination state that effluent water that is the result of brackish desalination should not be deposited into rivers or streams because of the delicate ecology of those bodies of water.

Critics of brackish groundwater desalination say that brackish groundwater is often irrevocably linked with fresh groundwater and that drilling for only brackish water without disrupting fresh groundwater is nearly impossible.

Proponents of desalination maintain that because water is becoming scarcer, the cost for desalination is not as outrageous as the idea of not having any water at all. They say that not being able to guarantee a source of water for industry that is considering building in the state would negatively impact Texas's economy.

Proponents cite the need for technology to reuse wastewater from fracking operations in order to reduce the use of freshwater in those types of operations.

Both proponents and opponents of desalination agree that desalination should be utilized in conjunction with conservation.

The 84th Legislature may consider legislation that addresses desalination technology for brackish oil and gas fracking fluid. The 84th Legislature may consider legislation that addresses desalination technology for seawater, brackish water, and brackish groundwater that is intended to be used as drinking water.

### Proposition 6

In 2013, Proposition 6, which was created by the passage of H.B. 4 (relating to the administration of the Texas Water Development Board and the funding of water projects by the board and other entities; authorizing the issuance of revenue bonds), 83rd Legislature, Regular Session, 2013, passed with more than 73 percent of the vote. The

plan uses \$2 billion of Rainy Day Fund money to create low-interest loans for water projects in the state.

The passage of H.B. 4 helped to make the Texas Water Development Board (TWDB) a proactive agency, rather than one that reacts to water issues. Since H.B. 4 was adopted, TWDB has worked to address the water needs of communities across the state. Carlos Rubinstein, chair, TWDB, has stated that agency's historically underutilized business program participation rate has increased from two percent to 24 percent since H.B. 4 was enacted. TWDB has also worked with several national and state regulatory agencies to communicate the level of environmental review needed to satisfy TWDB requirements by those seeking funds to build water infrastructure projects. With many areas of the state in a drought, the need for those projects to be funded quickly is important. TWDB addressed that issue in its decade-of-need assessment, which measures emergency needs and determines which areas of the state need water more urgently.

One of TWDB's goals with the guidance it provides is to show communities how to be considered for State Water Infrastructure Fund for Texas (SWIFT) funds if a change is made to a regional water plan. Regional water infrastructure plans that are not currently a part of the State Water Plan (plan) can be also reprioritized and added to the plan if necessary.

TWDB financial advisors collaborated with several stakeholders to achieve the goals of H.B. 4. TWDB worked to recognize the variables, indicators, and stressors related to the SWIFT funding model for future water plans. Financial advisors and TWDB staff worked together to determine the optimum rate of return for loans and to define an amount of funding that TWDB would not need for 10 years while loans are being paid off.

Supporters of these measures say that removing barriers for implementation of the plan is necessary because of the need for new water projects and conservation measures around the state.

Opponents of these measures say that the constitutional amendment should not have passed and that TWDB should not have been given power to implement the plan because of the possibility of corruption when managing SWIFT.

The 84th Legislature may consider legislation that reduces or removes barriers related to implementing portions of the State Water Plan.

### **Oil, Gas, and Energy**

#### Mexico's Energy Reform

In December 2013, Mexico's president, Enrique Peña Nieto, signed constitutional reforms that put an end to the country's state-owned oil and gas sector. The reforms opened the energy sector to private and foreign investors for the first time since 1938.

Experts have compared the reforms to the North American Free Trade Agreement (NAFTA) in terms of significance. Political conditions, economic realities, and external factors contributed to the reforms.

The reforms initially were widely supported. In September 2013, a poll found that 53 percent of Mexicans approved of the constitutional reforms, while 38 percent were opposed. Months later, approval waned as economic growth remained sluggish, and an average of 40 percent of Mexicans supported the reforms.

Economists have stated that the biggest challenges Mexico will face are due to a lack of expertise in oil and gas development and the need to quickly cultivate skilled workers.

In a September 2014 hearing of the Senate Subcommittee on Studying the Impact of Mexico's Energy Reforms on Texas (subcommittee), senators questioned how Texas' oil and gas industry would be affected by the reforms. Cesar Martinez, vice president, Vianovo, testified that future partnerships could be created in midstream infrastructure development and that Mexico will be in need of skilled workers, many of whom could come from Texas. Martinez stated that Mexico has many lessons to learn from development in the Eagle Ford Shale.

Christi Craddick, commissioner, Railroad Commission of Texas (railroad commission), stated that the railroad commission adopted a regulation that requires the oil and gas industry to adopt new technology to reuse water and to use brackish water during oil and gas extraction processes. Craddick recommended that Texas export that technology to Mexico.

Carlos Rubenstein, chair, Texas Water Development Board (TWDB), expressed concerns regarding the amount of water Mexico would use for increased oil and gas development. He said that Mexico is currently behind on its water debt to the United States and that Mexico has refused to act in meaningful ways to resolve its water deficit.

Proponents of Mexico's energy reform say that the Texas economy will be positively impacted by the changes.

Opponents say that water use and pollution from increased oil and gas development could negatively impact Texas' environment.

The 84th Legislature may consider legislation that relates to studies on how Mexico's oil and gas industry will affect Texas.

### Injection Wells

Texas has more than 3,600 active commercial oil and gas disposal wells. In 2013, the Railroad Commission of Texas (railroad commission), which regulates the state's oil and gas industry, approved 668 permits for disposal wells.

When an injection well is created, cement is poured between a rock wall and steel tubing to block contaminants. Injection wells have recently come under scrutiny by researchers, the public, and the railroad commission.

A study in the Proceedings of the National Academy of Sciences that examined water contamination in Texas and Pennsylvania recently found that faulty cement casings on injection wells used in oil and gas exploration could be why high levels of methane were found in some North Texas water wells.

In May 2014, the railroad commission released the results of an investigation saying there was not enough evidence to link the methane in the wells to drilling operations. In September 2014, a StateImpact Texas publication stated that the railroad commission is reviewing the National Academy of Sciences study and that it did not yet have a statement on the issue.

Opponents of enacting regulations related to how methane gas is being released into water say that a report by the railroad commission already dismissed the allegations that the gas was leaking into underground wells.

Proponents of enacting regulations related to how methane gas is entering wells say that studying the issue further is warranted because experts were not able to concur on a decision in the railroad commission's study and that independent studies have found a link between the wells and methane leakages.

United States Geological Survey data indicates that since November 2013, about three dozen earthquakes registering a magnitude of 2.0 or higher have occurred in areas around the Barnett Shale. A 3.2 magnitude earthquake occurred on the Eagle Ford Shale in Atascosa County on September 10, 2014.

In response to complaints from those who were affected, the railroad commission hired a seismologist to study the issue and develop a proposal, which requires drillers to submit

information, including data on the region's risk of earthquakes, when they apply for a disposal well permit. The permit also allows the railroad commission to pause or stop injections of waste into a well that is problematic. In October 2014, the railroad commission unanimously voted to adopt a new rule that incorporated the details of the proposal.

Proponents of enacting regulations related to earthquakes that are caused by oil and gas injection wells say that a study done by The University of Texas at Austin and another study conducted by Southern Methodist University in conjunction with The University of Texas at Austin have indicated that oil and gas drilling have caused earthquakes in the Barnett Shale. Proponents of such regulations include all three railroad commissioners, mayors in Azle and Reno, Texas, and the United States Environmental Protection Agency.

The 84th Legislature may consider legislation relating to regulations for oil and gas injection wells.

### Changes to Electricity Generation Model

The Public Utility Commission of Texas (PUC) was created by the Public Utility Regulatory Act of 1975. Its initial purpose was to provide statewide regulation of the rates and services of electric and telecommunications services. Since then, various changes have reshaped PUC, shifting its focus from up-front regulation of rates and services to oversight of competitive markets and compliance enforcement of statutes and rules. PUC has overseen the transition to competition in the local and long distance telecommunications markets and in the wholesale and retail electric markets. The agency also regulates the rates and services of transmission and distribution utilities that operate where there is competition, investor-owned electric utilities where competition has not been chosen, and incumbent local exchange companies that have not elected incentive regulation.

In a November 2013 hearing of the Senate Committee on Natural Resources (committee), Senator Fraser stated that the state's electric market is a model for all electric systems. He said that when the market was deregulated, the legislature decided to give PUC broad authority with the understanding that the legislature would be involved in the deregulation process. In the hearing, Senator Fraser expressed concern that PUC sought to gain more power than the legislature intended when it held a board meeting and discussed changing its market from an "energy only" model to a capacity model that would include a mandatory reliability margin and an auction mechanism to achieve that margin.

In the hearing, Brandy Marty, commissioner, PUC, stated that she is in favor of the change. Marty stated that she made her decision based on the best available data she had

at that time. Donna Nelson, chair, PUC, and Kenneth Anderson, commissioner, PUC, stated that they would like to keep the agency's current system.

The motivation to make changes to the system was prompted by concerns that Texas would not have enough generation to meet the future energy needs of a warmer climate and a larger population.

In March 2014, PUC stated that they would wait to make any changes to Texas' deregulated electricity market until the Texas Legislature provides input on the subject.

Proponents of changing the electricity market say the change would drive down electricity prices over time. Power generators that are in favor of the change say it would encourage the construction of new power plants to meet future needs.

Opponents of the change say that customers would have to pay for the costs of a market shift, which some analysts have determined would be \$4 billion a year. Opponents also say that a change in the market would be too complicated to maintain and it would shift power away from consumers.

The 84th Legislature may consider legislation relating to stricter oversight of the Public Utility Commission and changes to the state's electric generation model.

### **Common Carriers and Eminent Domain**

Under current Texas law, a common carrier has the statutory power of eminent domain to condemn private land needed for a pipeline. A common carrier owns the pipeline, but transports gas and other substances owned by others for a fee. To operate a pipeline in Texas, the pipeline company must apply for a T-4 permit issued by the Texas Railroad Commission (TRC). On the one-page application, the company checks a box to indicate that it will operate the pipeline as a common carrier.

On March 2, 2012, the Texas Supreme Court, in *Texas Rice Land Partners, Ltd, et al. v. Denbury Green Pipeline-Texas, LLC*, reaffirmed that landowners may challenge a common-carrier permit holder's exercise of eminent domain to condemn private land. The court explained that to qualify as a common carrier with the power of eminent domain, the pipeline company must establish that its pipeline will serve the public. The Texas Constitution, the court declared, permits the taking of private property by eminent domain only for public use. Any legislative grant of eminent domain power to private entities, the court stated, is limited by the constitution and subject to court scrutiny. The court held that the permit process was clerical, rather than adjudicative, as it imposed only minimal requirements, no notice is given to affected parties, and there is no hearing or investigation regarding whether an applicant qualifies as a common carrier. Nothing,



declared the court, established that the legislature intended that the granting of a permit would bar a landowner from challenging the permit holder's eminent domain power.

Both property owners and the pipeline industry have claimed that, following *Texas Rice Land Partners*, the law regarding private property rights and the exercise of eminent domain by common carriers is unclear. The pipeline industry asserts that it is facing a multitude of lawsuits by landowners challenging the exercise of eminent domain and that this may adversely affect oil and gas development in Texas. Property owners contend that under the current law, the T-4 permit application process is too simple and does not require that a company substantiate the claim that it qualifies as a common carrier. They argue that there must be a more rigorous process before a pipeline company is granted the power of eminent domain over private land. However, the pipeline industry responds that making the application process too stringent will discourage the development of oil and gas resources in the state.

During the 83rd Legislature, Regular Session, 2013, S.B. 1625, S.B. 1637, H.B. 2748, and H.B. 3547 were introduced, seeking to set standards and procedures for determining whether a pipeline qualifies as a common carrier, but none of the bills were enacted. TRC has proposed new rules regarding the granting of common carrier status to a pipeline, which would require an applicant to include a sworn statement providing the operator's factual basis supporting the classification and provide documentation supporting the classification being sought. Under the proposed rules, TRC would have 45 days to review the application and decide whether to issue the permit. The comment period regarding the proposed rules ended August 25, 2014.

Proponents of the proposed rules state that the rules provide for a more robust application process and predictable regulatory environment. Some pipeline operators, however, recommend that the right of a landowner to challenge a pipeline permit in court should be limited once a permit has been granted under the rules. Opponents note that the rules do not require any notice process to affected landowners or grant such landowners the right to be heard regarding the application and argue that the 45-day period does not give landowners sufficient time to research and mount a challenge to an application. Some opponents to the proposed rules suggest that the permitting process should be similar to the process for locating power lines, which requires notice and hearings.

The 84th Legislature may consider legislation related to common carriers and the exercise of eminent domain.

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**OPEN GOVERNMENT**

**Creating a Statutory Definition for "Student Record"**

The Senate Committee on Open Government, as part of its interim charges, investigated potential changes to the Texas Public Information Act aimed at ensuring that while public records and information remain accessible to the public to the fullest possible extent, governmental entities have the responsibility to protect the privacy interests of citizens, including grade school students and higher education students and applicants.

During the committee's November 12, 2014, meeting, interested parties expressed concern that "student record" has not been clearly defined in Texas statute. They stated that the current definition used by Texas that was established in Texas Attorney General Opinion H-447, which defines a student record as "information concerning the student and his individual relationship to the educational institution," is too vague and not enforceable by law. Proponents of a comprehensive statutory definition argue that reliance upon an attorney general's opinion offers insufficient clarity and insufficient protections for students and applicants.

The 84th Legislature may consider the creation of a statutory definition for "student record" that would increase clarity and ensure that students' and applicants' privacy is adequately protected.

**Increased Disclosure of Potential Conflicts of Interest**

It is not unheard of for members of the legislature to be employed by an entity that will occasionally have business before the legislature or to be employed by a law firm that has been hired to lobby the legislature regarding specific legislation. In 2003, the 78th Legislature, Regular Session, considered an amendment to H.B. 1606 that would have required legislators to disclose these relationships. The amendment died in the House of Representatives, but interested parties have expressed interest in shedding more light on these sorts of relationships.

Proponents of increased transparency requirements believe that the disclosure of these types of relationships will reduce the likelihood of legislators being beholden to their employers' interests. Opponents consider additional transparency requirements to be redundant and argue that many employers take measures to ensure that employees' occupational requirements do not interfere with their public service.

## ISSUES FACING THE 84<sup>th</sup> TEXAS LEGISLATURE

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The 84th Legislature may consider increased disclosure requirements for public servants who maintain business relationships that could potentially pose a conflict of interest.

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**STATE AFFAIRS**

**Adverse Possession**

"Adverse possession," as defined under Section 16.021, Civil Practice and Remedies Code, means an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person. Typically, adverse possession has been used to resolve issues such as boundary disputes, where it has been discovered that a long-established property line inadvertently was placed on neighboring property due to an inadequate or mistaken survey. Under adverse possession, the possession of the property must be open, obvious, continuous, and exclusive to the actual owner's interests and the burden is on the owner to bring an action to claim the property within the statute of limitations. The rightful owner of the property must institute suit within a specified period of time, which varies from three to 25 years, depending on various statutory factors and conditions, such as whether the person is in possession under title or color of title or cultivates or otherwise uses or enjoys the property.

In recent years, there have been a number of "squatter's rights" cases, in which a person enters onto property that the person claims is abandoned, records an affidavit of adverse possession, and then claims to hold title to the property. In some cases, the homeowner was merely out of town or absent because of medical treatment, while in other cases the properties had been foreclosed on and held by a bank or other creditor. In the Dallas area, one person is alleged to have filed such affidavits on multiple apparently abandoned properties and sold those properties to unsuspecting buyers, who then made mortgage payments to the fraudulent seller. The owner who wants to reclaim the property must often hire an attorney and engage in sometimes lengthy and expensive legal action to evict the person holding the property. The purchaser of such a property has no title and risks losing all the money he or she has invested in the property, including the purchase price, mortgage payments, and improvements. In some counties, persons claiming squatter's rights have been successfully prosecuted for burglary or criminal trespass. However, in other counties, prosecutors have been reluctant to take action or assert that the issue is a civil matter. For example, if the property in dispute was not secured and did not have any trespassing notice, some prosecutors question whether the person could be charged with burglary or trespass.

S.B. 947, introduced during the 83rd Legislature, Regular Session, 2013, initially imposed certain requirements on the filing of an affidavit of adverse possession, including requiring notice to any persons holding interest in the property and clarifying that the affidavit was not a deed of title. A Senate committee substitute provided that a

claim of adverse possession is not a defense to prosecution for burglary, unless the actor has full title subject to the Civil Practice and Remedies Code. The bill died in the House of Representatives.

Proponents for reforming the adverse possession law argue that the process and statutes of limitations for taking title through adverse possession need to be clarified to limit abuse and make it easier for prosecutors to pursue those who exploit the process. Opponents assert that there are already sufficient avenues for prosecuting those attempting to seize property by claiming such squatter's rights.

The 84th Legislature may consider legislation related to adverse possession.

### **Asset Forfeiture**

Chapter 59 of the Code of Criminal Procedure provides for the seizure and forfeiture of contraband. "Contraband" is property used or intended to be used in the commission of certain specified crimes, the proceeds gained from the commission of certain crimes, or property that was acquired with the proceeds of certain crimes. Under Chapter 59, the state may file a civil forfeiture action against the property, and there is no requirement that the owner of the property be found guilty or even be charged with a crime. The state has to establish by preponderance of the evidence that the property qualifies as contraband. Because this is a civil proceeding, the owner must bear the expense of hiring an attorney to reclaim the property. The burden is on the property owner to establish that the property is not contraband. Following proceedings set out in Chapter 59, the forfeited property is transferred to the law enforcement agency that originally seized the property and is to be used for law enforcement purposes. While forfeiture is a valuable tool and has helped fund law enforcement agencies throughout Texas, there are concerns regarding the expansion of the use of civil forfeiture by law enforcement agencies throughout the state.

After investigating reports that some Texas law enforcement agencies were abusing the civil forfeiture procedure and using forfeiture funds for non-law enforcement purposes, the Senate Committee on Criminal Justice, in its Interim Report to the 81st Legislature, December 2008, concluded that asset forfeiture had "become a profit-making, personal account for some law enforcement officials" and that there were increasing instances of abuse in the confiscation of assets and the spending of forfeiture proceeds. The legislature subsequently amended Chapter 59 to limit the use of proceeds by law enforcement agencies, require detailed reporting of expenditures, authorize audits by the state auditor, and authorize the Office of the Attorney General (OAG) to bring enforcement actions against law enforcement agencies that have violated provisions of Chapter 59.

However, some have expressed concern that the monetary incentives continue to entice local law enforcement to focus on more lucrative crimes or to abuse the power of forfeiture. They contend that asset forfeiture has become an increasingly tempting source of revenue for law enforcement agencies and that the law, initially aimed at seizing ill-gotten wealth from drug kingpins and crime bosses, is being used to seize money, automobiles, and houses from average citizens who lack the resources to challenge seizure of their property. Some arguing for civil forfeiture reform assert that the law is too heavily weighted in favor of law enforcement and may violate constitutional protections requiring due process and barring unreasonable search and seizure.

There are also issues regarding transparency concerning the seizure and use of contraband. A May 16, 2014, special report by the *Fort Worth Star-Telegram* reported that in 2013 only one law enforcement agency in Tarrant County, the White Settlement Police Department, had filed the required report on seizures and expenditures with OAG, yet the Tarrant County district attorney's office and the Tarrant County Narcotics Unit had seized millions of dollars in cash and assets in 2013. The report also found that it was difficult to track money and assets seized by multiple law enforcement agencies.

Concerns regarding the modern use of civil forfeiture have been voiced by justices of the Texas Supreme Court. On March 28, 2014, Justice Don Willett filed a dissent, joined by two other justices, to the denial of the petition for review in *Zaher El-Ali v. Texas*. The case involved the seizure of a 2004 pickup truck. The truck was owned by El-Ali and registered in his name, but he was selling it to a buyer who was still making payments. The buyer, while driving the truck, was arrested for driving while intoxicated, evading arrest, and possessing cocaine. Although El-Ali was not in the truck or involved in the criminal activity, Texas seized the vehicle and filed a civil forfeiture proceeding. El-Ali argued that the law placing the burden on property owners to prove their innocence violated his right to due process. Justice Willett noted that Texas civil forfeiture has changed significantly since the court last examined the law in 1957. He stated that civil forfeiture has become increasingly routine and that the scope of the law and the types of property that can be seized has been greatly expanded. Defendants in the legal system, Justice Willett declared, enjoy a presumption of innocence and the burden is on the government to prove their guilt beyond a reasonable doubt, but under civil forfeiture, property owners are presumed guilty and are required to prove their innocence. He stated that that cash-strapped governments at all levels are increasingly relying on civil forfeiture to boost revenue and fund operations, warning that as asset forfeiture expands, so does the risk of abuse. Justice Willett expressed concern regarding whether this combination of government power and profit could imperil fundamental constitutional liberties. Funding government, he declared, is important, but safeguarding the constitutional rights of Texans is more important. Justice Willett urged the legislature to revisit how the forfeiture law affects Texas citizens.

The 84th Legislature may consider legislation related to the asset forfeiture law.

### **Class Action Settlements**

On August 29, 2014, in *Highland Homes Ltd. v. Texas*, the Texas Supreme Court, in a five-to-four decision, ruled that the Texas Unclaimed Property Act (UPA), codified in Title 6 of the Property Code, does not apply to class action settlement proceeds that are unclaimed by absent class members. Rule 42, Texas Rules of Civil Procedure, authorizes members of a class to act on behalf of all class members, including the disposition of claims on behalf of absent class members. UPA provides that property unclaimed for three years is presumed abandoned and must to be delivered to the Office of the Comptroller of Public Accounts to hold for the owner.

The case concerned a settlement in a class action against Highland Homes, Ltd., a homebuilder, by a class representing its subcontractors. Under the court-approved settlement, settlement checks that were not negotiated by class members within 90 days of issuance would be void and the undistributed funds donated to The Nature Conservancy, a nonprofit conservation organization, as a cy pres award (the distribution of unclaimed settlement funds to an agreed-upon third party beneficiary). Texas objected to the settlement, asserting that the 90-day time period and the cy pres award were invalid because UPA bars the setting of any limitations period and any agreement to divert property for the purpose of circumventing UPA. The appellate court agreed with the state and Highland Homes appealed.

The opinion explained that the issue was whether settlement proceeds claimed by class representatives on behalf of absent members under Rule 42 are unclaimed property subject to UPA. The opinion held that because the class representatives acted on behalf of all absent members, this property was claimed by all the owners through the class representatives, therefore the settlement payments could not be presumed abandoned and that UPA was not applicable.

The dissent argued that the settlement checks were the property of the individual class members and that the class representatives' authority did not extend to the disposition of these checks. The dissent further argued that the cy pres award was inappropriate because the distribution was unrelated to the underlying lawsuit and the class members' interests.

The 84th Legislature may consider legislation related to class action settlements.

### **Disclosure of Criminal Records**

In Texas, a person may seek an order of expunction or nondisclosure to seal a criminal record. Under Article 55.01, Code of Criminal Procedure, a person is eligible to seek expunction of all records relating to an arrest if the person is acquitted, is convicted and subsequently pardoned, the person was not charged, or, if charged, the charge did not result in a final conviction. Article 55.03 provides that when the order of expunction is final, the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited.

Section 411.081, Government Code, authorizes certain persons who were placed on deferred adjudication community supervision and received a discharge and dismissal to obtain an order of nondisclosure prohibiting criminal justice agencies from disclosing criminal history record information related to the offense to the public. Depending on the offense, a person may have to wait as long as the fifth anniversary of the discharge and dismissal before being eligible to seek a nondisclosure order. The Department of Public Safety of the State of Texas (DPS) must seal any criminal history record information it maintains that is the subject of the order and must also notify certain state and federal law enforcement agencies, as well as private entities that purchase criminal history record information from DPS or are likely to have criminal history record information.

Having a criminal record can prevent a person from obtaining employment, housing, or education, and may make that person ineligible for certain occupational licenses or governmental benefits. There has been a proliferation of websites run by private commercial entities that use public information laws and online search programs to purchase and collect criminal record information and mug shots of persons who have been arrested and post this information online. Large data aggregators acquire the records from many sources, including state depositories, local government offices, and bulk purchases from individual record holders, and then sell this data to other background checking companies. These websites, which can contain millions of records, assert that they are only posting information that is already in the public record and are performing a public service by informing the public and deterring crime. Although the access to such websites is often free, a fee may be assessed to remove the pictures or records of persons whose photographs or information are posted on these websites. Some websites claim that they will remove a photograph or record without charge if the person establishes that charges were dropped or that there was no conviction. Problems occur for individuals when these companies fail to timely update or correct the records. A person's criminal record may be sold or shared multiple times among these commercial websites before an order of expunction or nondisclosure is issued and it can be very difficult for that person to locate and seek removal of all Internet references to the record.

The Texas Legislature has sought to address this issue. S.B. 1289, 83rd Legislature, Regular Session, 2013, added Chapter 109 (Business Entities Engaged in Publication of



Criminal Record Information) to the Business and Commerce Code. Chapter 109 requires any business entity that publishes criminal record information and demands payment in an amount of \$150 or more to remove criminal record information or charges a fee or other consideration to correct or modify criminal record information to ensure that the criminal record information is complete and accurate and to promptly remove or correct inaccurate information without charging a fee. The chapter also prohibits such an entity from publishing any criminal record information that is subject to an order of expunction or an order of nondisclosure and imposes civil penalties for violations.

However, some assert that further reform is needed regarding the disclosure and sale of criminal record information. Proponents state that the issue is not limiting or preventing public access to governmental records, but ensuring that the records are accurate and that any disclosure complies with the law. Some have noted that under current law only DPS is required to update criminal records when there is an order of nondisclosure or expunction, that criminal records may be located in many different agencies, and that there are no consistent policies regarding disclosure. Recommendations include barring the bulk sale of criminal records to private entities, delaying the disclosure or sale of any record until there has been a final criminal disposition of the case, making DPS the only Texas governmental entity permitted to sell or release criminal records, and imposing greater criminal and civil penalties on private commercial businesses for failing to update records. Other suggestions include expanding eligibility for expunction and nondisclosure, streamlining the process for seeking such orders, and barring plea agreements from requiring the waiver of the right to seek nondisclosure.

The 84th Legislature may consider legislation related to the disclosure of criminal records.

### **Driver Responsibility Program**

The Texas driver responsibility program (DRP) was created by H.B. 3588, 78th Legislature, Regular Session, 2003, and is codified in Chapter 708 of the Transportation Code. Under DRP, drivers are assigned points for certain traffic violations. If a driver accrues six points in a 36-month period, the driver is assessed a surcharge of \$100 for the first six points and \$25 for each additional point. Surcharges ranging from \$100 to \$1,000 are automatically imposed for convictions for certain intoxicated driver offenses, driving with an invalid license or without financial responsibility, or driving without a valid license, and this surcharge is assessed annually for a period of three years. Under DRP, 49.5 percent of all surcharges collected are allocated to the designated trauma facility and emergency medical services account for the funding of designated trauma facilities, county and regional emergency medical services, and the trauma care system. DRP was created to enhance public safety and help fund trauma centers.

Maryland, Michigan, New Jersey, New York, and Virginia have implemented programs similar to the Texas DRP, assigning points to certain traffic violations or offenses and imposing a surcharge if a driver accumulates more than a set number of such points, as well as imposing surcharges for certain specified traffic offenses. However, Maryland and Virginia have repealed their programs and Michigan enacted legislation in 2014 that will phase out its program by October 1, 2019.

Critics of the Texas DRP argue that it adversely impacts economically disadvantaged individuals who may not be able to afford the DRP surcharge, which can run into thousands of dollars over time, in addition to the fines and court costs already associated with a traffic violation. Further, opponents note that the collection of surcharges through a private vendor that is authorized to impose various service fees further increases the costs to individuals. Over a million Texas drivers have had their driver's licenses suspended for failing to pay the surcharge or for missing payments, which opponents argue has resulted in more drivers on Texas roads driving with invalid licenses. Opponents of the program also point to the low collection rate and the fact that there has been no apparent deterrent effect on the number of alcohol-related incidents. Some in the judicial system assert that DRP has resulted in a decrease in DWI convictions, with prosecutors and judges allowing defendants to plead to lesser offenses in order to avoid the DRP surcharge. Opponents argue that there are more appropriate ways to fund trauma centers.

Supporters of the program note that Texas trauma centers have received millions of dollars under DRP and suggest that if DRP was better publicized, it might have the desired deterrent effect. Some supporters argue that DRP could be improved through legislative reforms, such as by lowering the surcharges and limiting them to one year, imposing the higher conviction-based surcharge only to DWI offenses, requiring the courts to better educate defendants regarding DRP and surcharges, reducing surcharges for indigent and economically disadvantaged drivers, and implementing an effective amnesty program.

The 84th Legislature may consider legislation related to the driver responsibility program.

### **Employees Retirement System and Teacher Retirement System**

The Employees Retirement System of Texas (ERS) provides retirement benefits to retired state employees, law enforcement officers, and judges, and the Teacher Retirement System of Texas (TRS) provides retirement benefits to retired teachers. In both systems, the state and the employees contribute to the pension trust fund and the contributions are professionally invested to fund future retirement benefits. Both are defined benefit plans,

meaning that upon retirement the employee receives a specified monthly benefit based on the employee's earning history and duration of employment.

Although the ERS and TRS have reported that both plans are secure and able to pay benefits for decades to come, neither plan is actuarially sound, as defined by statute, which means that the plans cannot increase benefits. It is generally agreed that a good benefit plan is important in attracting and retaining qualified employees and that any changes to the plans should be considered while the plans are stable and healthy.

ERS and TRS have stated that for the plans to remain sustainable, changes will have to be made. The 83rd Legislature, Regular Session, 2013, made a number of changes to ERS and TRS to lower the unfunded liability. These changes included increasing the age and requiring a certain number of years of service before a member is eligible to retire and receive a standard service retirement annuity, reducing the service retirement annuity for persons who retire earlier, and increasing member contributions. However, these changes alone are not sufficient to make either retirement system actuarially sound. Economic downturns, stagnant salaries, and a shrinking number of active employees have adversely impacted revenues coming into each system.

Some have proposed changing the current plans from a defined benefit plan to a defined contribution plan, in which the employer sets up an investment account for each employee and makes specified contributions to that account. Opponents argue that shifting employees to alternative plans would not necessarily make the plans more actuarially sound, may cost more to provide equivalent benefits, would result in lower benefits to employees, and would make it harder for the state to recruit and retain employees. Some argue that the state must increase its contributions, noting that state contributions are lower than the national average and below the constitutional minimum. Opponents respond that increasing the state contribution rate alone will not make the plans actuarially sound, that any increase in state contribution would require increasing state revenues and that any increased contribution by the state should be matched by increased contributions from participants. Some suggest creating a separate pension fund for law enforcement officers who, because of the stresses of their work, may retire earlier, which could make it easier to address solvency issues in ERS, as well as to craft solutions more appropriate to the special needs of state employees working in law enforcement.

The 84th Legislature may consider legislation related to ERS and TRS.

### **Medical Price Transparency**

S.B. 1731, 80th Legislature, Regular Session, 2007, sought to address rising health care costs in part by increasing transparency in the costs of health care services. The bill

requires that such information be made available to the public, allowing health care consumers make better informed and cost-effective health choices. Under S.B. 1731, the Texas Department of Insurance (TDI) is required to collect data regarding health care plan reimbursement rates and to make such information available to consumers.

TDI has created a website to provide the data required under S.B. 1731 available to consumers, but because of the amount and complexity of this data, the website is a work in progress. TDI is working with stakeholders to make the website more informative and user friendly and to allow consumers to search for certain procedures and categories by region, as well as to determine which services are in network and the charges for such services. TDI plans to combine the different components of a medical procedure, such as radiological costs or facility fees, so that a consumer can determine the overall cost. TDI will also work to make the public more aware of the website.

However, many consumers do not know what information is available or how to effectively use the information. Some argue that health care transparency must not only look at the cost of health care, but also must educate consumers regarding how health care coverage works, how to access services, and how to determine which providers are in a consumer's network. Recommendations include better education for consumers regarding how various health plans work and how to access and use health care data; encouraging health plans to create their own tools to educate consumers; ensuring that all health care information is timely and accurate; providing data by procedure; ensuring that all charges for a procedure or treatment event are included; and providing consumers with data that would allow them to compare different health insurance plans.

Another issue affecting medical price transparency concerns balance billing. Balance billing occurs when a patient receives care from a physician or other health care provider outside of the patient's health care network, and that patient is subsequently billed for the difference between the amount of the claim paid by the patient's insurer and the amount charged by the out-of-network provider. The result may be thousands of dollars in unexpected medical bills.

In many cases, emergency room physicians, anesthesiologists, radiologists, or other health care providers working in a hospital are not employees of that hospital, but instead contract with the hospital. Even though the hospital may be within the consumer's health care network, unless these providers have agreed independently to be covered by the consumer's network, any services that they provide to the consumer will be considered out-of-network. A consumer who goes to an emergency room in a hospital included in the consumer's network may be treated by emergency room personnel outside of that network. Even if a consumer chooses an in-network provider for an elective procedure, that patient could be subject to balance billing for any services provided by an out-of-network specialist who consults with the physician or for services provided by an out-of-network radiologist or anesthesiologist. Consumers often have no way of determining,

especially in an emergency situation, which health care services are being performed by out-of-network providers and the additional costs for such services. This situation affects transparency in the health care market and makes it difficult for consumers to make fully informed decisions regarding health care.

TDI has issued rules that provide some protections for participants in health maintenance organizations and preferred provider organization plans, but the rules do not bar out-of-network providers from balance billing and consumers often are not aware of the protections offered by these complex rules. Some health care consumers are also entitled to seek mediation of balance billing, but many eligible consumers are not aware of this option.

Recommendations to address balance billing include better education for consumers regarding their existing rights and the expansion of mediation to make it more widely available to consumers. Other recommendations include clarifying that consumers who are treated by an out-of-network provider in an emergency are liable only for the same out-of-pocket cost they would have paid for in-network care; requiring that consumers give written consent to receive out-of-network services in elective procedures; banning the balance billing of consumers for emergency medical treatment or when a consumer did not consent to care by an out-of-network provider; and requiring that insurers and providers directly mediate billing disputes for out-of-network care.

The 84th Legislature may consider legislation related to medical price transparency.

### **Patent Assertion Entities**

Patent assertion entities (PAEs), also known as "patent trolls," are entities that purchase patents without any intent to develop or manufacture products based on the patents. Many of these patents are for software and are often abstract and overbroad. PAEs focus on threatening or filing patent infringement claims against other entities and businesses, often end users. Targets may include businesses using technology such as scanners, copiers, or widely-available software applications. PAEs typically have no actual manufacturing or research capabilities and may be a series of shell corporations controlled by a single entity. PAEs may also search pending patent applications for potential infringement claims. Typically, a PAE will send a demand letter accusing the recipient of infringing on a patent held by the PAE, demanding a license fee, and threatening the recipient with litigation if the recipient does not comply. It is not unusual for a PAE to send the same blanket demand to multiple parties or businesses. Patent lawsuits are complex and expensive and even if the defendant is successful, it cannot recoup many of these expenses. Because it is often less costly to settle the claim than engage in litigation, many businesses settle with PAEs. There is concern that PAEs are a

growing industry that is exploiting the patent process, hindering research and development, and stifling innovation.

The federal government has taken some steps to address this issue. The 2011 Leahy-Smith America Invents Act seeks to improve the patent system, including providing for post-grant review of patents. However, proponents of patent reform assert that this has not stopped the growth of PAEs. President Barack Obama has issued a series of executive orders directing the federal Trademark and Patent Office to take steps to stop vague or overbroad patents and provide more transparency, and in his 2014 State of the Union address, he urged Congress to enact "a patent reform bill that allows our businesses to stay focused on innovation, not costly, needless litigation." Federal courts have also issued a series of decisions limiting litigation by PAEs. On June 19, 2014, in *Alice Corporation v. CLS Bank*, a unanimous United States Supreme Court ruled that an abstract concept does not become eligible for a patent simply because it is executed using purely function and generic computer hardware. Commentators say that this ruling will limit the granting and enforcement of overbroad and vague software patents.

Article 1, Section 8, Clause 8, of the United States Constitution reserves to Congress the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Although the federal government therefore has the exclusive power to regulate and issue patents, states have taken action to address PAE claims brought in bad faith. In 2013, Vermont enacted legislation granting a cause of action to the subject of a claim made in bad faith and requiring unsuccessful PAEs to pay court costs and fees in addition to other damages. Sixteen other states have since passed legislation regarding bad faith patent claims by PAEs. Attorneys general in several states have also taken action against PAEs.

Some urge that Texas enact laws addressing bad faith claims by PAEs. They note that because the United States District Court for the Eastern District of Texas specializes in patent law, Texas has become a center for this type of litigation. They have expressed concern that if Texas does not act, businesses and innovators may move to jurisdictions that provide more protection. However, others caution that any legislation must not hinder inventors and companies from defending legitimate patents and must protect communications sent in good faith. They warn that state action could be preempted by federal law and that legislation by the states could result in a patchwork of laws. Possible laws addressing PAEs could include bringing bad faith claims within the Texas Deceptive Trade Practices Act, authorizing the Office of the Attorney General to collect data regarding patent claims and to bring actions for bad faith demands, authorizing a private cause of action for bad faith claims, or requiring an entity to register with the state if it files a certain number of patent infringement claims.

The 84th Legislature may consider legislation related to patent assertion entities.

### Property Tax Appraisals

Article VIII (Taxation and Revenue), Section 1, of the Texas Constitution requires that taxation be equal and uniform. Some argue that the current system for appraising property for ad valorem taxation has resulted in unequal and unfair property taxes in violation of the constitution.

Under current Texas law, a taxpayer may argue that his or her real property is appraised unequally if the appraised value of the property exceeds the median appraised value of comparable properties. This is known as an equity appeal. Equity appeals can help reduce property taxes when properties are unequally assessed. Single-family residences are generally more accurately assessed than commercial properties.

Some homeowners assert that equity appeals have resulted in reducing the property tax liability of large commercial properties, reducing assessments well below the properties' actual market value. They point to cases in which commercial properties were able to significantly reduce their property tax appraisals, resulting in some school districts, cities, and counties having to refund millions of tax dollars. They also assert that these changes have shifted more of the tax burden to homeowners and small businesses.

The issue arises from two changes made to the Tax Code. S.B. 841, enacted by the 75th Legislature, Regular Session, 1997, added Subsection (d) to Section 42.26 (Remedy for Unequal Appraisal), Tax Code, which requires a district court to grant relief on the grounds that a property is appraised unequally if the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted. H.B. 1082, enacted by the 78th Legislature, Regular Session, 2003, amended Subsection (b), Section 41.43 (Protest of Determination of Value or Inequality of Appraisal), Tax Code, to provide that a protest on the ground of unequal value must be determined in favor of the protesting party unless the appraisal district establishes that "the appraised value of the property is equal to or less than the median appraised value level of a reasonable number of comparable properties appropriately adjusted." Supporters of H.B. 1082 testified that it grants taxpayers the opportunity to make the same equity argument at the administrative level as they can in district court.

A related issue concerns the recording of the sales prices of real property. In some states, real estate sales prices are part of the public record. In other states, real estate prices must be reported to governmental agencies, but are not made available to the public. Texas, however, is one of a handful of states that does not provide for the recording of real estate prices. In fact, H.B. 2188, enacted by the 80th Legislature, Regular Session, 2007, exempts information relating to real property, including sales prices, from disclosure under the Texas public information laws. Supporters of nondisclosure argue that this protects the privacy of property owners, sellers, and purchasers. They also assert that

disclosing sales price information will result in increases in already rising property taxes and may discourage development.

Proponents for the disclosure of real estate prices assert that the current system results in unfair property tax appraisals and makes it more difficult for citizens to challenge property tax assessments. Appraisal districts currently rely on the private multiple listing service (MLS), a subscription service used by real estate agents and private appraisers. The MLS database is weighted toward moderately-priced single-family residential property, as commercial and high-end residential sales are not listed. This results in moderately-priced residences being accurately appraised as to their actual value, but, because there is little reliable information regarding sales of prices of high-end residential and commercial property, these properties are often undervalued. Proponents further claim that this effectively shifts more of the tax burden to middle and working class home owners. They also note that appraised values are already available to the public through the tax rolls, so that protecting privacy is not really an issue.

The 84th Legislature may consider legislation related to property tax appraisals.

### **Texas Mutual Insurance Company**

In 1991, the Texas Legislature created the Texas Workers' Compensation Insurance Fund in response to rising workers' compensation rates and the reluctance of insurance companies to provide coverage for Texas employers. This fund was created to ensure the availability of workers' compensation insurance in Texas as the state's insurer of last resort for businesses that were unable to find coverage elsewhere. H.B. 3458, 77th Legislature, Regular Session, 2001, changed the name to the Texas Mutual Insurance Company (TMIC), authorizing TMIC to operate as a domestic mutual insurance company under continued state oversight. Currently, TMIC has a market share of 39.5 percent, making it one of the largest providers in the state.

Some argue that because there is currently ample competition in the workers' compensation insurance market, state involvement in the private workers' compensation insurance is no longer necessary, and that TMIC should be allowed to become a private company. They note that TMIC has paid off all the revenue bonds used to fund it, that TMIC does not receive any state funding, that its employees are not state employees, and that all its assets come from policyholder premiums. Proponents assert that as an insurance company, TMIC would continue to be regulated by the Texas Department of Insurance. They claim that continued state involvement is limiting the rights of TMIC policyholders to elect their own governing board, as the governor appoints five of the nine board members, and prevents TMIC from doing business in other states.



Opponents argue that there is no good public policy reason for permitting TMIC to become a private company. They assert that TMIC was created and funded by the state government and that the problems with workers' compensation could reoccur in the future. Opponents note that making TMIC a private company would take TMIC's \$2 billion capital reserve into a private fund. They argue that if state tries to transfer liability for TMIC to an assigned risk pool, this may result in other insurers leaving the market. Opponents also express concern that TMIC has been slowly removed from state oversight, including oversight by the Office of the Attorney General, the Sunset Advisory Commission, and the open records and open meetings laws.

The 84th Legislature may consider legislation related to the Texas Mutual Insurance Company.



## **TRANSPORTATION**

### **Automobile Insurance Verification**

TexasSure is the state's automobile insurance verification program, which began operation in 2008 and is a joint effort of the Texas Department of Motor Vehicles, the Texas Department of Public Safety (DPS), the Texas Department of Insurance, and the Texas Department of Information Resources. TexasSure allows the state to match vehicle registrations to automobile insurance policies to maintain a record of which drivers in Texas have automobile insurance. Although it is a violation of the Texas Motor Vehicle Safety Responsibility Act to operate a motor vehicle without automobile insurance, TexasSure does not have the authority to take legal action against those without insurance. Instead, TexasSure sends letters to drivers who do not have a matching vehicle registration and insurance policy in its database to inform them of the discrepancy. In order to be prosecuted for operating a motor vehicle without insurance, motorists must be caught by law enforcement while driving without insurance, either by being stopped or by being involved in an accident.

As of August 25, 2014, there were over 2,781,946 privately registered vehicles in Texas without a corresponding insurance policy. That number represents 14.09 percent of all privately registered vehicles in Texas. It is estimated that Texans spend \$1 billion annually in uninsured motorist protection insurance.

TexasSure serves only as a verification system for private automobile insurance policies and vehicles at present, but there has been a call to incorporate commercial vehicle insurance information into the program. Advocates for a commercial vehicle insurance verification system claim that such a system is becoming increasingly important due to the rising number of commercial vehicles on Texas roads and the rising number of traffic accidents involving commercial vehicles in Texas, which increased by 10.9 percent from 2012 to 2013. Opponents to incorporating commercial vehicle insurance into the TexasSure program claim that implementing such a system would be difficult because commercial vehicle insurance policies are not associated with individual vehicle identification numbers (VIN) as private policies are, but are generally associated with a business or an entire fleet of vehicles, making the current procedure used by TexasSure of matching an insurance policy to the VIN of a registered vehicle inapplicable. Opponents claim that the cost to the state of implementing such a system would not make it a worthwhile endeavor and that most of the accidents involving uninsured vehicles do not involve uninsured commercial vehicles, but uninsured private vehicles.

The 84th Legislature may consider legislation that will allow TexasSure or DPS to take a more proactive role against uninsured motorists in TexasSure's database. The 84th Legislature may consider adding commercial vehicle information to the TexasSure program.

### **Comprehensive Development Agreements and Toll Collections**

Section 223.201 (Comprehensive Development Agreements), Transportation Code, authorizes the Texas Department of Transportation (TxDOT) to use comprehensive development agreements (CDAs) to partner with private entities to construct, repair, and enhance state highways and toll projects in Texas. CDAs allow TxDOT to carry out infrastructure projects without raising taxes or relying on the limited funds apportioned directly to TxDOT, because TxDOT instead pays with bonds issued to the private entity, or allows that entity to collect a portion of the toll revenue from a completed road project. Some ongoing CDA projects include SH 130, LBJ 635, IH 35E, SH 99, the Horseshoe Project, the DFW Connector, and the North Tarrant Express.

However, the use of CDAs is controversial, as illustrated by a poll conducted in 2013 by Texas Future among 800 registered Texas voters. This poll indicated many Texans would prefer a return to the "pay-as-you-go" system that preceded CDAs. Concerns expressed by those opposed to toll roads include the use of public funds to finance private toll roads, anti-competition rules prohibiting the construction of public roads near established toll roads, and the efficacy of toll roads in reducing traffic congestion.

Additionally, there has been growing concern among public and private leaders alike regarding the use of the Department of Public Safety of the State of Texas (DPS) by tolling entities in the collection of unpaid tolls. S.B. 1792 (Relating to remedies for the nonpayment of tolls for the use of toll projects; authorizing a fee; creating an offense), 83rd Legislature, Regular Session, 2013, allows tolling entities such as the North Texas Tollway Authority and the Central Texas Regional Mobility Authority to take certain actions against habitual toll violators, defined as drivers who have 100 or more unpaid toll violations with at least two notices of nonpayment in a 12-month period, to encourage such violators to pay their tolls. S.B. 1792 authorizes tolling entities to ban the vehicles of habitual toll violators from operating on their toll roads, to block the registration of vehicles owned by habitual toll violators, and to impound vehicles owned by toll violators who continue to operate on their toll roads after having been banned. DPS carries out the vehicle registration bans and serves notifications to drivers of vehicles traveling along toll roads from which they are banned before impounding their vehicles. Some opponents have expressed concern that tolling entities deliberately allow users to build up unpaid tolls in order to impose extra penalty fees in addition to the unpaid tolls owed by toll violators. There are also concerns that DPS officers could be put to better use than performing collection duties for private entities.

The 84th Legislature may consider changing the regulations concerning toll construction in Texas to make toll roads more accessible and inviting to Texas motorists. The 84th Legislature may consider returning to a "pay-as-you-go" system to finance Texas roads. The 84th Legislature may consider changes to the toll remedies allowed under S.B. 1792.

### **Confederate License Plate Controversy**

In 2011, the Sons of Confederate Veterans (SCV), Texas Division, an organization describing itself as dedicated to the preservation of the legacy and history of the Confederate cause, filed an application with the Texas Department of Motor Vehicles (TxDMV) for a specialty license plate featuring the Confederate battle flag. TxDMV denied the application, citing the battle flag in particular as being a primary reason for the denial and declaring the flag an offensive symbol. SCV subsequently filed suit on the grounds that the group's freedom of speech was being violated.

In July 2014, the United States Court of Appeals for the Fifth Circuit decided in favor of SCV and reversed an earlier ruling on the case which held that Texas could legally deny SCV's application for a specialty license plate featuring the Confederate battle flag. Texas must either approve SCV's application for the specialty license plate or appeal to the United States Supreme Court. Proponents for continued litigation argue that the Confederate battle flag is a symbol of oppression and that such a symbol should not be associated with the State of Texas, while opponents to continued litigation argue that the state only stands to lose taxpayer money if it wins the case because of court costs, but will gain revenue if it loses the case, because SCV supporters will purchase the specialty license plate.

The principal matters at issue in the case are whether license plates represent an applicable forum for private speech and are therefore protected by the First Amendment, and whether TxDMV's rejection of the plate constituted viewpoint discrimination. TxDMV argues that because the state produces the license plates, it "effectively controls" the message printed on those plates. Therefore, the plates would be considered government speech and immune from First Amendment considerations. SCV holds, however, that the license plates are private speech because any "reasonable observer" would associate the message on the license plate with the driver of the car displaying the plate, rather than with the government issuing the plate, and that therefore the license plate should be protected by the First Amendment. Additionally, TxDMV has been said to have engaged in viewpoint discrimination, because it allows other veteran groups to have their own specialty license plates, and for other flags to be displayed on specialty license plates, but specifically excludes SCV's specialty license plate.

The 84th Legislature may consider revising the laws pertaining to specialty license plates to avoid being required to produce offensive symbols without interfering with individuals' right to freedom of speech.

### **Driver's License Issues**

Wait times have been notoriously long at Texas Department of Public Safety (DPS) offices, particularly in 2012 and 2013. Some citizens have reported waiting in line for up to three hours, even for simple transactions such as renewing a driver's license.

DPS has made changes and improvements to its operations and services to reduce wait times, including rerouting customer service calls from busy local offices to a DPS contact center; allowing driver's license renewal by mail, telephone, or online; and opening seven megacenters in Dallas, Fort Worth, Austin, and San Antonio. DPS also plans to introduce driver's license kiosks in 2015 to further reduce the demand placed on local DPS offices. Changes and improvements made to reduce the amount of time people must wait at a DPS office include expanding online services to allow customers to claim a place in the waiting line at a local DPS office before they arrive in person, and allowing appointments to be made in advance for time-consuming activities such as driving tests for new drivers applying for a driver's license.

The 84th Legislature may consider legislation to facilitate DPS's efforts to maintain reduced wait times at DPS offices.

### **Energy Reform in Mexico**

Mexico recently enacted constitutional changes that significantly reform its energy sector. For more than 75 years, Petroleos Mexicanos (PEMEX), Mexico's state-owned oil and gas company, has maintained a monopoly on Mexico's energy sector. The reform will allow domestic and foreign investors to engage in partnerships with PEMEX, which has lead experts to predict that Mexican oil and natural gas production may increase as much as 75 percent in the next 30 years, despite a steady decrease in production over the last decade. Mexico's oil and gas production is not expected to immediately begin increasing, however; current predictions anticipate a stabilization of Mexico's production, followed by gradual increases beginning in the next two to five years.

PEMEX will still control around 80 percent of identified oil reserves in Mexico, but a number of pre-defined regions will be opened to a public bidding process whereby investors will compete for access to these regions for exploration and future production. Many of the regions to be opened for bidding are along the Texas-Mexico border, and

thus afford oil and gas companies in Texas a chance to expand their operations southward, if they can outbid their competitors.

Regardless of who wins the bids for the regions near Texas, Texas border towns are expected to be heavily impacted by Mexico's reform. The Eagle Ford Consortium reported to the Senate Committee on Natural Resources (committee) that the border towns should prepare for substantial increases in population, water and sewer use, traffic volume and accidents, and road damage and repairs. It is likely that the border crossings will need to be expanded or upgraded to accommodate the increase in traffic they will need to handle.

These concerns are echoed in a Texas Transportation Institute (TTI) report to the committee. This report also predicts statewide impacts to the transportation system. Due to a lack of infrastructure in Mexico, there will likely be an increase in truck traffic delivering oil rig supplies and equipment to Mexico through Texas, particularly in oversize and overweight permitted loads, which have already been increasing over the past 10 years. Additionally, as natural gas production is increased and the cost of electricity is lowered in Mexico, Mexican manufacturing may increase, which could in turn raise the amount of truck traffic carrying goods out of Mexico and into Texas. Increased commercial vehicle traffic could become an important issue, both because of the damage done to Texas roads by heavy loads and increased traffic volumes and because of an increase in traffic accidents involving commercial vehicles. The number of such accidents increased 10.9 percent from 2012 to 2013. Texas ports, particularly Brownsville and Corpus Christi, are expected to experience increases in shipping traffic with heightened Mexican demand for pipe.

Texas railways will also experience increased use as Mexico will likely import hydraulic fracturing materials from Wisconsin and other U.S. states. It is predicted that Texas railways will be the portion of the Texas transportation system most heavily impacted by the Mexican reform, because Mexico lacks the pipeline and refineries found in the Gulf States and will need to ship its crude oil on Texas rails to be refined. It is likely that Texas rail systems will need to be expanded to meet this demand.

The 84th Legislature may consider increasing funding for Texas' transportation systems, and may consider the options for increased transportation system use throughout the state.

### **Fatigue-Related Trucking Accidents**

Driver fatigue is an important factor in traffic accidents for commercial and non-commercial drivers alike. According to polls administered by the National Sleep Foundation, over 64 percent of those surveyed said they have driven while feeling

drowsy in the past year, and 36 percent said they have fallen asleep while driving. The American Automobile Association estimates that one of every six deadly traffic accidents is caused in part by drowsy driving. Federal regulations concerning the hours of service commercial drivers are allowed to operate have been implemented to combat the problem of drowsy driving.

Under 49 Code of Federal Regulations 395, load-carrying commercial vehicles may only operate for a maximum of 60 or 70 hours every seven or eight days, respectively, and must take a 34-hour rest period including two nights from 2:00 to 5:00 a.m. before they can resume driving. Additionally, drivers may only drive for 11 total hours a day after 10 consecutive hours off duty, and may not operate the vehicle after a total of 14 hours have passed since the driver has come on duty. Drivers must also take at least one 30-minute break during the first eight hours of coming on duty. However, Texas provides exceptions to these federal regulations under 37 Texas Administrative Code, Section 4.12 (Exemptions and Exceptions), for commercial vehicles used in oil or water well services, self-propelled cranes, vehicles transporting seed cotton, or concrete pumps, provided such vehicles are operated only within Texas.

As the oil and gas industry continues to expand in Texas, the number of trucks and commercial vehicles servicing the industry is also increasing. From 2012 to 2013, traffic accidents involving commercial vehicles increased by 10.9 percent in Texas. A large portion of the accidents are concentrated in the Eagle Ford Shale and Permian Basin areas, which experienced a seven and 15 percent increase respectively in traffic accidents from 2012 to 2013.

The 84th Legislature may consider eliminating the exceptions to the federal regulations concerning hours of service for vehicles involved in oil and gas activity. The 84th Legislature may also consider legislation to further limit the hours commercial drivers are allowed to drive.

### **Oversize and Overweight Trucks and Weigh Stations**

Oversize and overweight vehicles are defined in Chapter 621 (General Provisions Relating to Vehicle Size and Weight), Transportation Code. The number of such vehicles on Texas roads has been increasing over the last 10 years, with more than 836,000 oversize and overweight permits sold in fiscal year (FY) 2014, which is a 5.81 percent increase over the 790,123 permits sold in FY 2013. These permit sales generated \$179 million, and over 44 percent of all the oversize and overweight permits issued in 2014 were issued to the oil and gas industry. The continuing increase of both oversize and overweight and commercial vehicles on Texas roads is a growing concern, given the growing degradation of Texas roads due to the demand placed on them by increased loads and traffic volumes.

There are over 100 weigh stations for commercial vehicles in Texas that help enforce compliance with Texas regulations on weight, size, and equipment safety. However, because of increased traffic volumes and the congestion that sometimes occurs due to opening weigh stations for extended periods of time, there are concerns that not enough commercial vehicles are being weighed and monitored. Oversize or overweight vehicles can do significant damage to Texas infrastructure if they travel along routes that are prohibited for their size or weight, and if the drivers of such vehicles are not forced to stop and have their vehicles weighed, there can be no way to know whether drivers are driving oversize or overweight loads without a permit along weight-restricted roads.

The 84th Legislature may consider increasing the number of weigh stations either throughout Texas or along major or vulnerable roads. The 84th Legislature may consider increasing the amount of time that weigh stations are open, possibly by hiring more weigh station workers. The 84th Legislature may also consider increasing the fines for operating an oversize or overweight vehicle without an appropriate permit.

### **Statewide Ban on Texting**

In 2013, more than 94,000 traffic accidents in Texas were attributed to distracted driving. Of that total, 18,576 accidents resulted in serious injuries and 459 resulted in deaths. Although there were more crashes in 2013 than in 2012, there were fewer total injuries and deaths. This continued increase in the number of traffic accidents illustrates the ongoing problem distracted driving poses to Texas motorists.

Distracted driving encompasses a number of behaviors, including eating and drinking, grooming, talking to passengers, reading, adjusting the radio, and using a cell phone. Drivers frequently engage in several of these behaviors, with 65 percent of respondents in a national survey reporting that they have adjusted the radio while driving on at least some trips and 80 percent reporting that they have spoken with passengers in the vehicle on at least some trips. Cell phone use, especially texting, is considered a more dangerous distracted driving factor, because it diverts the visual, manual, and cognitive attention of the driver. The Texas Transportation Institute (TTI) conducted a survey of Texas drivers that found 76 percent report having talked on a cell phone while driving at least once in the past month, and 24 percent report that they did so regularly. TTI also found that 44 percent of Texas drivers report reading or typing text messages or emails while driving in the past month. The National Safety Council reports that over 26 percent of all automobile accidents involve cell phone use.

Measures have been taken to reduce the number of people engaging in cell phone use while driving. Texas driving schools have begun incorporating information about distracted driving, particularly cell phone use, into their curriculum in order to educate



new drivers about the danger posed by such activities. There have also been multiple attempts by Texas legislators over the years to implement statewide bans on texting and cell phone use, although no statewide ban on texting while driving has been enacted to date. There are other statewide bans on cell phone use, such as by novice drivers, by drivers of buses carrying children, and while driving in school zones. While the legislature has not passed any statewide bans on texting, 21 cities across Texas have enacted ordinances against texting while driving.

The 84th Legislature may consider establishing a statewide prohibition on texting while driving.

### **Texas Escort Vehicle Driver Requirements**

Under the Transportation Code, oversize and overweight trucks and loads beyond certain dimensions must be accompanied by an escort vehicle to warn the motoring public of an approaching oversize load on the roadway. However, the Transportation Code only regulates the signage the escort vehicles must display, the equipment they must carry, and the number of escort vehicles required for certain loads. The Transportation Code does not specify requirements for the drivers of such escort vehicles.

The lack of escort vehicle driver requirements makes Texas one of 26 states that have no requirements for their escort drivers. The remaining 24 states vary in the number and specificity of requirements they place on escort vehicle drivers, but most mandate some basic qualifications, such as a minimum age or liability insurance. Twelve states require escort drivers to undergo a certification and training program before they can escort loads. Several of these states have entered into reciprocal agreements with one another, such that certification in one state applies in the others, although each state nonetheless has unique general requirements others may lack, such as specific amounts of insurance or whether the escort drivers must be certified as flagmen.

The number of oversize and overweight loads on Texas roadways has increased over the past 10 years, and over 836,000 oversize and overweight permits were sold in fiscal year (FY) 2014, which is a 5.81 percent increase over the 790,123 permits sold in FY 2013. As the number of permitted loads on Texas roadways continues to increase, it may be prudent for Texas to join the ranks of other states with qualifications for their escort drivers. Supporters of increased qualifications for Texas escort drivers say that such a change could do more than ensure the safety of the motoring public—escort drivers trained in traffic control measures may help to decrease traffic congestion around an oversize or overweight load.

The 84th Legislature may consider legislation that establishes requirements for drivers of escort vehicles on Texas roads, both to improve public safety and to reduce traffic delays associated with oversize and overweight loads.

### **Texas Roadways and Bridges**

In 2013, Texas was estimated to have a population of 26,448,193, which was a 5.2 percent increase from the 2010 population of 25,145,561. One reason for this surge in population is the continuing growth of the oil and gas industry, which has precipitated growth in a myriad of industries that serve the needs of the growing worker population. This increase in industry and commerce is evidenced by the increased number of trucks and commercial vehicles on Texas roads, increasing traffic by 24 percent from 2009 to 2012 along the least affected sections of IH-35, and increasing traffic by 86 percent along the most affected sections. All of these factors have culminated in a significant degradation of Texas roadways, leaving only 86.47 percent of Texas' roads rated in good or better condition as of 2012.

The Texas Department of Transportation (TxDOT) reports that the Texas Transportation Institute (TTI) estimates that the funds necessary to maintain the roads in their current condition each year total \$1 billion dollars for the farm-to-market network, \$1 billion for local roads, and \$2 billion for the state highway system. In order to mitigate the damage done to Texas roads by heavy trucks and increased traffic volumes and reduce maintenance costs, TxDOT has attempted to "armor" Texas roads in preparation for increased traffic activity. However, because the oil and gas industry is very competitive and secretive, communication between the industry and TxDOT has been arduous, and TxDOT has had limited success in identifying roads that would benefit from armoring. Because of budget concerns and the inefficiency of current maintenance strategies, TxDOT proposed converting 83 miles of paved roads into gravel roads in several southern counties to reduce maintenance costs. This proposal was met with strong protest from local citizens and officials, and after converting five miles in Live Oak County, TxDOT halted the project and is now in the process of repaving those roads.

Texas bridges are also in degraded conditions. As of 2012, two percent of the state-maintained bridges are considered structurally deficient, meaning that the bridges have a severe weight-limit restriction, have such significant deterioration that their load limit is below its original capacity, are frequently flooded, or are closed, and 17 percent are considered functionally obsolete, meaning that they have failed to meet design criteria in deck geometry, load capacity, vertical or horizontal clearances, or roadway alignment. However, current bridge conditions are an improvement over conditions in 2001 when 30 percent of Texas bridges were structurally deficient or functionally obsolete.

Texas' increased population and the growing number of vehicles on the road have also caused traffic congestion problems. Texans are estimated by The Road Information Program (TRIP) to spend \$25.1 billion each year in extra vehicle operating costs due to increased time in traffic and poor road conditions. TTI has compiled a list of the 100 most congested roadways in Texas, 90 of which are in Harris, Travis, Dallas, and Bexar Counties. The 100 roadways cause over 28,709,965 hours of delay and almost \$3.7 billion in congestion costs annually. There are 25 metropolitan planning organizations (MPOs) in Texas, which are federally mandated to plan for all transportation infrastructure needs in areas with populations greater than 50,000, and with which TxDOT has partnered to reduce congestion along the 100 most congested roadways. TxDOT has identified and is in the process of developing approximately \$24.6 billion worth of unfunded projects related to the top 100 most congested roadways. At present, \$9 billion has been allocated to reduce congestion along these roadways.

The 84th Legislature may consider increasing funding for road maintenance, repair, and construction. The 84th Legislature may consider TxDOT and MPO suggestions for reducing congestion on Texas roadways. The 84th Legislature may consider allocating additional funding to repair Texas' bridges.

### **Transportation Financing**

Texas is having trouble finding funding for its transportation needs. Substantial increases in traffic congestion, traffic volume, and oversize and overweight vehicles have taken their toll on the state's roads. The Texas Department of Transportation (TxDOT) requested budgets of \$10,781,531,898 and \$10,233,584,311 for fiscal years (FY) 2014 and 2015, and was granted \$11,092,157,085 and \$10,115,639,213, respectively. TxDOT has requested budgets of \$10,354,485,545 for FY 2016 and \$9,585,626,802 for FY 2017. TxDOT's budget request for 2017 is less than for previous requests because the limits of Proposition 12 and Proposition 14 bonds are being reached, and TxDOT will not be paying as much debt service on them.

Significant sources of funding for Texas' transportation needs come from Proposition 12 and Proposition 14 bond issuance, fuel tax revenue, and federal funding.

Proposition 12 bonds, approved by the Texas Legislature and Texas voters in 2007, allow TxDOT to issue general obligation (GO) bonds up to a maximum limit of \$5 billion for infrastructure projects. However, this limit has been met. TxDOT was authorized to issue \$2 billion worth of bonds in 2009, and the last \$3 billion in 2011. Proposition 14 bonds, approved by the Texas Legislature and Texas voters in 2008, allow TxDOT to issue voter-approved general revenue bonds up to a maximum of \$2.9 billion for projects across the state, of which \$1.1 billion has been issued so far. GO bond debts are paid

from the state's General Revenue Fund, while Proposition 14 bonds are paid from the State Highway Fund.

Texans are taxed 38.4 cents for every gallon of fuel they purchase, of which 20 cents is a state tax and the remainder a federal fuel tax. Fifteen cents of the state tax goes to the State Highway Fund while the remaining five cents goes to Texas public schools. In FY 2014, a total of \$3.316 billion was collected in state fuel tax revenue, which is a 2.93 percent increase over the \$3.222 billion collected in FY 2013. However, as more drivers make use of global positioning system navigation devices, drive more fuel-efficient vehicles, and make fewer or shorter drives, fuel tax revenue may decrease in the coming years.

Federal funding is unpredictable and remains uncertain, but more than one-third of TxDOT's funding is supported by federal sources. The Moving Ahead for Progress in the 21st Century Act (MAP-21) provided federal funding to Texas in the amount of \$6.953 billion for the 2013-2014 biennium. MAP-21 funding has been extended to May 2015, but no further funding has been announced for the rest of 2015 or the 2016-2017 biennium.

The Texas Legislature has attempted to contend with the funding issue in a number of ways, notably with the passage of S.B. 1747 and H.B. 1025 and the creation of comprehensive development agreements (CDAs).

S.B. 1747 (relating to funding and donations for transportation projects, including projects of county energy transportation reinvestment zones), 83rd Legislature, Regular Session, 2013, allocated \$225 million to be divided among Texas counties to maintain county roads. Under the formula to determine which counties were eligible to receive funding included in S.B. 1747, all 254 counties were deemed eligible. H.B. 1025 (relating to making supplemental appropriations and reductions in appropriations and giving direction and adjustment authority regarding appropriations), 83rd Legislature, Regular Session, 2013, allocated \$225 million to TxDOT to maintain state roads. However, the issuance of this \$450 million was a singular event and is not currently scheduled to be repeated.

The legislature has also developed CDAs that allow TxDOT to partner with private entities to construct, repair, or enhance state highways and toll projects in Texas by issuing bonds to those entities or allowing them to collect some portion of the proceeds from a toll project. However, CDA projects have been opposed by some members of the public, and are not a popular way of handling infrastructure problems.

Other methods have been proposed to increase the funding available for transportation. These proposals include the following: halt the diversion of money from the State Highway Fund to finance the Texas Department of Public Safety (DPS); increase the fees

for oversize and overweight vehicle permits, which would place more of the responsibility for paying for damaged roads on the heavy trucks that are more culpable for such damage than smaller vehicles; increase the penalties for operating a truck above the legal weight and size limits without a permit; direct up to half of the revenue from vehicle sales taxes to transportation funding needs; implement a local option fuel tax or local option vehicle registration fee, which would give local regions the ability to collect extra taxes or fees and put the revenue toward local transportation projects; divert a portion of the oil and natural gas severance taxes back to the counties in which oil and natural gas is produced to fund their infrastructure needs; raise the current fuel tax; change the fuel tax so that it is indexed to the Consumer Price Index or the Highway Cost Index; change the fuel tax so that a 6.25 percent sales tax would be either added to the fuel tax or substituted for the current 20 cent fuel tax; and impose a surcharge for driver's license fees. A constitutional amendment to divert a portion of the oil and natural gas severance tax revenue going to the Economic Stability Fund, also known as the Rainy Day Fund, has also been proposed and was recently approved.

Proposition 1, as the constitutional amendment appeared on ballots across Texas for the November 4, 2014 election, has been approved by the legislature and Texas voters. Previously, when oil and natural gas severance tax revenue exceeded the amount collected in FY 1987, 75 percent of the surplus revenue went to the Economic Stability Fund and 25 percent went to the General Revenue Fund. Currently, as long as the Economic Stability Fund is above a certain level, as determined each biennium by a joint legislative committee, half of the oil and gas severance tax revenue going to the Economic Stability Fund will go to the State Highway Fund. Revenue from oil and gas severance tax totaled \$5,773,652,388 in FY 2014, which is a 28.7 percent increase over the \$4,486,093,075 total in FY 2013.

The 84th Legislature might consider halting the diversion of funds from the State Highway Fund to finance DPS, increasing oversize and overweight permit fees, increasing the penalties for driving an oversize or overweight truck without a permit, directing vehicle sales tax revenue to transportation funding, raising or changing the fuel tax, enacting local option fuel and vehicle registration taxes, diverting oil and gas severance tax revenue to the oil and gas producing counties of Texas, and adding a surcharge to driver license fees. The 84th Legislature might also consider allocating more funds to transportation issues like road maintenance and construction.

### **Transportation Networking Companies**

Transportation networking companies (TNC), such as Uber and Lyft, are attempting to establish themselves in Texas. Many city codes prohibit the operations of TNCs, which they consider to be taxi and limousine services and should be subject to regulation. TNCs claim they should not be subject to such regulation because they operate through the use

of mobile apps on smart phones that connect drivers with potential customers. They do not own any vehicles or hire drivers. Because TNCs do not own vehicles or employ drivers, they claim they do not fall under the category of taxi and limousine services. TNCs collect a portion of the fare, which fluctuates based on demand, on the mobile app after payment is made electronically.

Houston and Austin have passed ordinances that allow TNCs to operate legally. Austin requires TNCs to possess commercial liability insurance in an amount of at least \$1 million for personal injury and property damage and to submit quarterly reports to the city regarding how many people are served. Houston allows yellow cabs that are requested through a mobile app to use unmetered fares, just as TNCs do. State laws that govern taxi and limousine services in Texas include 43 Texas Administrative Code, Section 217.30 (Commercial Vehicle Registration), which states that buses, taxis, and other transport vehicles operating outside the limits of the city or town in which they are franchised must display a "Motor Bus" license plate, and Section 215.073 (Vehicles for Hire), Transportation Code, which leaves the regulation of taxi and limo services up to the cities in which those services are located.

Controversy regarding TNC operations arises from perceived TNC encroachment on the taxi and limousine market, the lack of wheelchair accessible vehicles operating for TNCs, and the methods available for hailing and paying for TNC services. Taxi and limousine companies say that TNCs have an unfair advantage because TNCs are not held to the same regulations as traditional taxi and limousine services—they are not required to obtain permits, are not subject to a maximum fare, and are not required to have a minimum amount of wheelchair-accessible vehicles in their fleet. Advocates for disabled citizens say that TNCs violate the Americans with Disabilities Act because TNCs do not have the required number of dedicated wheelchair-accessible vehicles in their fleets. Finally, because not all Texans have a smart phone or credit card, which are necessary to obtain TNC services, there are concerns that TNCs will reduce the mobility of such Texans as the number of other taxi and limousine services are reduced due to competition with TNCs.

The 84th Legislature may consider enacting statewide regulations for vehicle-for-hire and other transportation services to end the city-by-city controversy. The 84th Legislature may consider altering the regulations for taxi and limousine services to level the playing field with TNCs.



## **VETERANS AFFAIRS AND MILITARY INSTALLATIONS**

### **Clinic Wait Times for Veterans**

Veterans returning to civilian life are eligible to receive health care from local Department of Veterans Affairs (VA) hospitals and clinics. However, reports by the VA in 2014 found that the VA medical facilities in Texas have some of the longest patient wait times in the nation. Clinics in Harlingen, El Paso, Dallas, and Amarillo are among the 10 clinics with the longest average wait times in the country. Overall, new patients seeking primary care at Texas VA clinics have an average wait time of 85 days.

Elected officials have voiced concerns about the wait times experienced by veterans seeking medical care. Despite this, officials have said that Texas is limited in what it can do at federal facilities because it cannot provide additional medical professionals to ease the high patient-to-doctor ratio in such medical facilities. Proponents of reducing wait times indicate that there have been "systematic issues" in scheduling practices which have resulted in the long backlogs.

The 84th Legislature may consider legislation to form oversight groups that could serve as watchdogs for Texas veterans. Additionally, the 84th Legislature may consider legislation to routinely review VA clinics in an effort to ensure that veterans can receive the services they need without delay.

### **Female Veteran Issues**

Women comprise more than 15 percent of the U.S. military forces and Texas is home to the greatest number of female veterans. The U.S. Department of Veteran Affairs estimates that the number of women veterans will increase from 7.7 percent to approximately 10 percent by 2020. While programs exist to aid veterans, questions have been raised over whether there should be special programs specifically designed to address the needs of female veterans.

Proponents of special assistance for female veterans believe that benefits cannot simply be added to existing facilities, as programs need to be established that serve the particular needs of women. It can be difficult for a "one-size-fits-all" application of services because women have a different set of issues than their male counterparts. VA officials believe that, in addition to programs that focus on topics such as basic hygiene, credit repair, and resume writing, programs should be established that assist female veterans who may be single mothers or dealing with drug or alcohol problems or domestic abuse.

When facilities are separated between genders, officials note that female veterans tend to access more services. Some female veterans may not feel comfortable in mixed-gender treatment settings.

The 84th Legislature may consider legislation to establish programs that address the unique needs of female veterans.

### **Higher Education Opportunities**

Of the approximately 1.7 million veterans in Texas, about 393,000 are between 17 and 44 years old. Many of these veterans, upon returning to civilian life from active combat, are interested in embarking upon or resuming an academic career. In order to help veterans receive the education they deserve, three benefit programs have been made available to them: the Montgomery G.I. Bill, the Post 9/11 Bill, and the Hazlewood Legacy Act. All three bills provide qualified veterans and their spouses and dependent children with tuition waivers.

While all three programs have helped veterans in their pursuit of higher education, officials note that public universities are being placed under increasing financial strain as the state broadens the pool of individuals who are eligible for tuition waivers. Institutions of higher education lost \$72 million in fiscal year (FY) 2011 in unassessed tuition and fees, triple the \$24 million lost in FY 2007.

Since there is not a statewide system for evaluating college credit earned in the military, colleges often have a difficult time decoding and understanding military transcripts. Efforts are being made to harmonize the transcript language between the military and institutions of higher education so that returning veterans do not have to return to college to relearn skills that were previously attained while serving in the military. By allowing veterans to receive college credit for their military service, returning soldiers will be able to save money and start working sooner than they otherwise might have been able to do.

The 84th Legislature may consider legislation to strengthen policies such as the Hazlewood Act so that more veterans can complete their education. Additionally, the 84th Legislature may enact legislation that creates a statewide system to evaluate college credit earned in the military so that veterans can receive credit for experience earned and skills attained while serving in the military.

### **Mental Health Care for Veterans**

Veterans returning from active duty often suffer from mental health issues. Whether it is post-traumatic stress disorder (PTSD), anxiety, or depression, veterans can be afflicted by



various symptoms that can become progressively worse if they do not receive the treatment they need in a timely fashion. The RAND Center for Military Health Policy Research reports that approximately 20 percent of the 1.7 million soldiers who were deployed in Afghanistan and Iraq suffer from PTSD or major depression. Additionally, the Department of Veterans Affairs stated that an average of 22 veterans commit suicide every day. Various treatments are available for PTSD and major depression, including counseling, medication, and peer-supported practices.

The 83rd Legislature increased access to mental health services by appropriating an additional \$4 million to the Department of State Health Services to help service members, veterans, and their families receive assistance. While programs such as the Veterans Behavioral Health Initiative have been enacted to improve the delivery of mental health services to veterans within Texas, officials note that it can be difficult to contact veterans who may have undiagnosed mental health issues.

The 84th Legislature may consider legislation to expand mental health services for veterans.

### **Military Bases in Texas**

Texas houses several major military bases and installations serving all branches of the United States military. According to the Comptroller of Public Accounts of the State of Texas, Texas military installations add more than \$148 billion to the Texas economy. They account for six percent of the state's economic activity and provide job opportunities to more than 255,000 military and defense-related civilian personnel.

The 2005 Defense Base Closure and Realignment Commission (BRAC) had a goal of aligning military priorities by reducing the number of overlapping facilities and reorganizing functions. In areas where military bases have closed, such as Corpus Christi and Texarkana, communities have struggled to replace the jobs lost with approximately 500 defense-related jobs being lost in Texarkana alone. Other areas of the state have benefitted from BRAC, as thousands of military personnel have been relocated from closed or repurposed bases.

Officials note that base closures not only take away jobs but also create an exodus of skilled people from the community.

The 84th Legislature may consider legislation to lessen the economic impact of base closings on Texas communities.

### **Veteran Preferred Employment Opportunities**

Finding employment can be one of the biggest challenges for veterans returning to civilian life. All over the United States, veterans can find it difficult to secure employment that calls upon the skills they attained while serving in the armed forces. In Texas, however, much consideration has been given to increasing employment prospects for returning veterans. Certain workplaces have been designated as "military-friendly work environments," where emphasis is placed on hiring veterans.

The Texas Workforce Commission and the Texas Veterans Commission both provide employment training and personal assistance to veterans. They also match employment recruiters to veterans based on their skill sets. Within the last three years, the Texas Workforce Commission was able to help 2,400 veterans (or their spouses) find work in which they could apply their skills.

Proponents say that preferred employment opportunities for veterans lower the unemployment rate for veterans and provide establishments with skilled workers who have abilities that they may not be able to find elsewhere. Some observers state that veterans may be recalled to active service which can create issues when attempting to hire veterans.

The 84th Legislature may consider legislation to further help veterans of the armed forces find employment in Texas.

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**SUNSET REVIEW**

The Sunset Advisory Commission (Sunset) reviewed 20 entities scheduled for consideration by the 84th Legislature. The Sunset process provides for the examination of state boards, agencies, and commissions in order to determine their efficacy in carrying out their missions. Sunset legislation for the following entities may be considered:

State Office of Administrative Hearings Tax Division

State Office of Administrative Hearings

Department of Aging and Disability Services

Department of Assistive and Rehabilitative Services

Interagency Task Force for Children With Special Needs

Texas Council for Developmental Disabilities

Texas Education Agency (Limited Scope Review)

Texas Facilities Commission (Re-review)

Department of Family and Protective Services

Health and Human Services Commission

Texas Health Care Information Council (Special Purpose Review)

Texas Health Services Authority

Department of State Health Services

Governor's Committee on People with Disabilities

Texas Council on Purchasing from People with Disabilities

Entry Criteria for Self-Directed Semi-Independent Agencies (Special Review)

State Soil and Water Conservation Board (Limited Scope Review)

University Interscholastic League

Texas Workforce Commission

Texas Workforce Investment Council